

O4G3FRO1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 FRONTIER AIRLINES, INC.,

4 Plaintiff,

5 v.

20 Civ. 9713 (LLS)

6 AMCK AVIATION HOLDINGS IRELAND
7 LIMITED, ACCIPITER INVESTMENT
8 4 LIMITED, VERMILLION AVIATION
(TWO) LIMITED,

9 Defendants.

10 Bench Trial

11 New York, N.Y.
12 April 16, 2024
11:00 a.m.

13 Before:

14 HON. LOUIS L. STANTON,

15 District Judge

16 APPEARANCES

17 LANE POWELL PC
Attorneys for Plaintiff
18 BY: DAVID G. HOSENPUD
AARON SCHAER

19 CLIFFORD CHANCE US LLP
20 Attorneys for Defendants
21 BY: JEFF E. BUTLER
JOHN P. ALEXANDER
22 RISHIKA JIKARIA
GINA CROSBY

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Dempsey - Direct

1 (Trial resumed; in open court)

2 THE COURT: Good morning.

3 JAMES DEMPSEY,

4 called as a witness by the Plaintiff,

5 having been previously sworn, testified as follows:

6 DIRECT EXAMINATION (Continued)

7 BY MR. HOSENPUD:

8 Q. Good morning, Mr. Dempsey.

9 A. Good morning.

10 Q. Mr. Dempsey, during the first part of your examination
11 yesterday, the Court asked you a few questions. I'd just like
12 to return to those briefly.

13 I believe the first question was whether Frontier
14 wanted the airplanes under the AMCK Framework Agreement to
15 deliver. What was your answer?

16 A. Yes, we did want the aircraft to deliver. It was a
17 material or meaningful cash positive event for Frontier to take
18 delivery of an aircraft. Each aircraft that delivers, we, as I
19 said yesterday, we sell the aircraft at the market price, but
20 we have purchased the aircraft at a lower discounted price, so
21 there is an upfront gain that occurs at the point of the
22 delivery of the aircraft. Plus it provides us PDP relief where
23 the PDPs are funded at the purchase of the aircraft by the
24 leasing company. When the leasing company turns up to pay
25 \$51 million for purchasing the asset, Airbus gets paid over

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1 \$10 million for the predelivery payments. And those funds come
2 back to Frontier to fund future deliveries.

3 So it is a meaningful improvement in the liquidity to
4 the tune of 13 to 15 million dollars in this case.

5 Q. Can you please explain the concept of prepaid rent in
6 relation to the context it was discussed here. What does that
7 mean?

8 A. Prepaid rent will be quite an unusual occurrence in a
9 lease, where you would pay in advance of the actual lease
10 occurring.

11 In the context of what we had discussed yesterday, and
12 what we had offered to AMCK, one of the concessions we were
13 making to AMCK was to provide them with incremental security so
14 that they would confident we would not come back and look for a
15 further deferral. So the structure that we put in place was to
16 prepay rent. And that prepaid rent would have happened at the
17 point of the delivery of the aircraft, for the aircraft that
18 was under the Framework Agreement.

19 So the next aircraft AMCK were due to pay us
20 \$51 million for that aircraft. We would have -- we offered to
21 them six months of prepaid rent or a holdback. So instead of
22 providing \$51 million, AMCK would have provided \$51 million
23 less six months of rent. So that would have been equivalent to
24 maybe 1.8, 1.9 million dollars.

25 Q. So those six months in that scenario would have been

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Dempsey - Direct

1 advance paid?

2 A. Yes.

3 Q. Based --

4 A. We would effectively be paying rent in advance, which is
5 highly unusual in an aircraft leasing transaction. We were in
6 a very unusual time.

7 Q. Finally, could you please explain what the economic
8 benefits to AMCK were associated with waiving Frontier's rent
9 on 14 aircraft while the parties negotiated?

10 A. Yeah. So, AMCK was due to finance three aircraft in the
11 near term. Each aircraft they would have been required to pay
12 \$51 million for those aircraft.

13 What the waiver gave for AMCK was they did not have to
14 fund those aircraft until those aircraft delivered. And our
15 task in the waiver structure was to defer those aircraft with
16 Airbus as long as possible. So that would push out their
17 requirement to fund those aircraft deliveries and pay
18 \$51 million for each aircraft or \$153 million in total for the
19 three aircraft that were delivering in quarter 2 of 2020.

20 Q. Was there rent interest associated with the rent that
21 Frontier was allowed to defer during the month-to-month?

22 A. Yes, we would have paid interest on the deferred rent.
23 That was always part -- so the waiver as it existed, was
24 designed to give us time to negotiate with Airbus a deferral in
25 favor of AMCK. And then it was also designed to give time to

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Dempsey - Direct

1 AMCK and Frontier to negotiate a repayment agreement, and that
2 repayment agreement would have included interest.

3 Q. I'd like to turn now to Exhibit 121 which is where we left
4 off yesterday.

5 I am going to have that in front of you momentarily.
6 We are going to scroll down to the section of that exhibit that
7 we had been discussing.

8 I'd like to finish out with a few questions, starting
9 with point one, there's language that says they understand they
10 must be current on all payments at and beyond closing.

11 Did you say this to Mr. Sheridan?

12 A. Yes.

13 Q. Was this is consistent within the understanding of the
14 month-to-month waiver?

15 A. Yes.

16 Q. When you told Mr. Sheridan this understanding, did he say
17 anything that called your understanding into question?

18 A. No, he did not.

19 Q. The next two sentences say, "They will immediately pay
20 outstanding April rents on which we agreed an informal deferral
21 pending agreement with Airbus on delivery delays. They will
22 pay May, June, and July rents and all beyond on time."

23 A few questions with that. Why were you offering to
24 pay outstanding April rents immediately if you understood that
25 AMCK wanted Frontier to pay rent at the next delivery at or

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Dempsey - Direct

1 before the next delivery at this point? You knew the next
2 delivery was not happening at this time.

3 A. No, we understood that we had a waiver in place and it was
4 consistent with the first sentence. We also wanted to bring
5 the negotiations to a conclusion, and that was quite important
6 to us as well.

7 Q. Why is that?

8 A. We were in the process of agreeing a deal with Airbus to
9 defer the aircraft deliveries. We were keen to ensure that
10 AMCK was the financier for those aircraft deliveries. So we
11 were keen to bring all these negotiations to a close around
12 this time.

13 Q. Did AMCK accept Frontier's offer to pay immediately?

14 A. They did not.

15 Q. Did the negotiations continue after that?

16 A. Yes, they did, yeah.

17 Q. Part of the phrase that we just read through, "Outstanding
18 April rents on which we agreed an informal deferral pending
19 agreement with Airbus on delivery delays," what did you
20 understand this to refer to?

21 A. Which portion of the sentence?

22 Q. "On which we agreed an informal deferral pending agreement
23 with Airbus on delivery delays."

24 A. I mean, that is I think Paul Sheridan paraphrasing the
25 agreement we had put in the place on the waiver. The waiver

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Dempsey - Direct

1 was in place to give us time to get an agreement in place with
2 Airbus and an agreement in place between Frontier and AMCK.
3 That's consistent with my understanding of the waiver, but I
4 think that's his words, not mine.

5 Q. Do you have any sense of why he only says "outstanding
6 April rents" at this stage?

7 A. I don't. I can only deduce they were the rents that were
8 outstanding at that point. But I don't, no.

9 Q. So May rents had not yet become due?

10 A. They had not. It was April 30.

11 Q. Did Mr. Sheridan ever tell you the month-to-month waiver
12 only pertained to April rents?

13 A. He did not.

14 Q. Did he ever say it was only for one month?

15 A. He did not.

16 Q. What was your understanding of when the month-to-month
17 waiver expired?

18 A. The month-to-month waiver was designed in order to give us
19 time to get an agreement with Airbus and AMCK. It was linked
20 to the next aircraft delivery. And when we put in place on
21 April 7 the next aircraft delivery was in May, likely to be the
22 second half of May. So that was at the point in April 7,
23 that's when it would need to be repaid subject to getting an
24 agreement elsewhere in terms of moving aircraft deliveries or
25 an agreement on rent deferrals with AMCK that was part of that

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Dempsey - Direct

1 waiver.

2 Q. I'd like to turn now to Exhibit 120. This is an e-mail
3 from Mr. Sheridan to you and others dated April 30, 2020.

4 What do you understand this document to be?

5 A. This is a continuation of the negotiation with us between
6 us and AMCK as part of the waiver framework that was put in
7 place.

8 Q. What do these bullet points reflect?

9 A. They reflect their updated proposal to us at that time.

10 Q. Does this relate to the month-to-month deferral waiver?

11 A. It doesn't specifically relate to the month-to-month
12 deferral waiver. But the waiver gave us the ability to have
13 these discussions and negotiations at this time.

14 Q. Did you think that this communication affected the
15 existence of the month-to-month waiver?

16 A. No, it did not.

17 Q. Why not?

18 A. Because the waiver was put in place to enable a framework
19 for us to negotiate both with Airbus and with AMCK.

20 Q. The --

21 A. Those negotiations were continuing.

22 Q. Pardon me for interrupting.

23 The first bullet point: Deliveries in July 2020, 3
24 aircraft, February 2021, 2 aircraft. What does that term
25 reflect?

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1 A. That is the updated deferral that we had achieved with
2 Airbus that was in the final stages of negotiation with Airbus
3 and that was -- that was Paul reflecting a conversation I had
4 with him updating him as to where the aircraft were moving to
5 in the discussions with Airbus.

6 Q. The second point: All payments to be current on May 15 and
7 to remain current.

8 What does that reflect?

9 A. That was the first time a date, other than the next
10 aircraft delivery, that AMCK had posed to us, that we had to
11 have no outstanding rent. So up until this time, there was a
12 consistency in their message to us that we had to be current
13 and have no outstanding rent at delivery of the next aircraft,
14 which at this point was in July, and this was the first time
15 they raised a prior date, which is May 15, 2020, that we had to
16 be current on all rent.

17 Q. Now, the final term, could you briefly explain the
18 financial consequences of this term.

19 A. Yeah. This term effectively was a request by AMCK to have
20 an early termination -- option removal on the six aircraft in
21 the Framework Agreement, and extend the 12 aircraft that were
22 delivered in 2017, 2018, and 2019 to 12 years. So in effect 18
23 aircraft will have been committed from 8 years to 12 years.
24 This request was an over \$200 million request by AMCK to create
25 an obligation on Frontier at that time. And that was very

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Dempsey - Direct

1 onerous to us.

2 Q. Does anything about this e-mail of April 30 from
3 Mr. Sheridan to you call into question the month-to-month rent
4 deferral?

5 A. No.

6 Q. Let me if we scroll down on this e-mail, let me focus your
7 attention on the language for avoidance of doubt in the final
8 paragraph. What did you take this to mean?

9 A. I think this is typical boilerplate language you see from
10 time to time in e-mails that are linked to proposals.

11 Q. Did you think that the e-mail above it created a binding
12 agreement?

13 A. No.

14 Q. I'd like to return to Joint Exhibit 63 for a moment.
15 Mr. Dempsey, I'm showing you the April 6 document you testified
16 about yesterday. Do you recall this?

17 A. Yes.

18 Q. And what is this document?

19 A. This is an e-mail from Paul Sheridan to me cc'ing a series
20 of other people. This e-mail sets out a call that Paul had
21 with Robert where he sets out the initial deferral agreement
22 that was put in place or initial waiver that was put in place
23 between them on April 6.

24 Q. In this e-mail, do you see any of the boilerplate language
25 we just referred to?

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Dempsey - Direct

1 A. No.

2 Q. You testified about a call on April 7 with Mr. Sheridan.
3 Do you recall that?

4 A. Yes.

5 Q. Briefly, please remind us of the content of that call.

6 A. That call was an extension of this conversation and
7 follow-up e-mail to me. Where we discussed putting in place a
8 waiver on a month-to-month basis that enabled us to reach
9 agreement with Airbus, and gave us time to reach an agreement
10 with Airbus that was badly needed, and also time to reach an
11 agreement with AMCK. So that was the content of that call.

12 Q. On April 7, did Mr. Sheridan recite to you anything
13 relating to the for avoidance of doubt this call is for
14 discussion purposes only or anything even close to that?

15 A. He did not.

16 Q. Let's go back to Joint Exhibit 120, please. Did you
17 consider the last of these three points acceptable to Frontier,
18 the lease extensions?

19 A. No. I mean, as I said earlier, this was an onerous request
20 by AMCK. It would have put Frontier in a position -- at a time
21 when we were trying to raise as much liquidity as possible,
22 this would have added an obligation, a debt obligation to our
23 balance sheet over \$200 million, and effectively would have
24 reduced our debt capacity, our borrowing capacity of the
25 airline at a time when we needed to maximize the borrowing

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Dempsey - Direct

1 capacity of the airline. And at this stage we were in
2 discussions with the U.S. Treasury around a loan. In addition
3 to the earlier payroll support that the government had given,
4 we were in discussions with them about a loan, and one of the
5 dynamics of that was understanding what our debt capacity was.
6 So we were very protective of our debt capacity at that time
7 because we were -- it was unclear as to how much debt we would
8 need in order to manage through the pandemic.

9 Q. I'd like to turn your attention now to Joint Exhibit 122.

10 This is an e-mail dated April 30, 2020, from you to
11 Mr. Sheridan. What is this?

12 A. This is my reaction to his e-mail and I asked for a call.
13 And I pointed out that his request was overreach.

14 Q. Why do you say that?

15 A. Because of what I just told you in terms of I didn't think
16 it had any balance to the proposal. Given we were negotiating
17 an agreement with each other, I thought this third clause was
18 very onerous on Frontier, given the request that we had made
19 for a short term deferral in rent.

20 Q. Did you have a call with Mr. Sheridan after this e-mail?

21 A. Yes.

22 Q. When was it?

23 A. That day.

24 Q. What did you discuss on this call?

25 A. We discussed an alternative -- we discussed this issue.

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Dempsey - Direct

1 And I explained to him why Frontier could not accommodate his
2 request, and I made an alternative proposal.

3 Q. What were the terms of that alternative proposal?

4 A. I made a proposal at the point of delivery of an aircraft
5 to prepay rent for six months on the three aircraft that were
6 upcoming. He in turn would give us time to repay rent on the
7 14 aircraft that were part of the waiver. And I also set out
8 that we had moved aircraft into 2021 in that proposal.

9 Q. Did you also renew what you had said to him in the phone
10 call regarding immediate rent payment?

11 A. Yes, yes, that was one of the options.

12 Q. On this call, did Mr. Sheridan say anything about the
13 waiver period being over?

14 A. He did not.

15 Q. Did he say anything about negotiations being over?

16 A. No, he did not. He said he would take my proposal and talk
17 to his shareholder.

18 Q. Did you perceive the waiver period to be over as of this
19 phone call?

20 A. I did not.

21 Q. I am going to turn now to Joint Exhibit 127. This is dated
22 May 1, 2020, and I think there may be a more legible image.

23 Sir, what is this document?

24 A. I had sent Paul Sheridan a text on May 1st asking him for
25 an update on the status, that I had been expecting a call from

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Dempsey - Direct

1 him that day.

2 Q. What were you referring to on May 1 with respect to
3 expecting a call?

4 A. The proposal I'd made to him the previous day.

5 Q. How does Mr. Sheridan respond?

6 A. He says "We're about to get on a call with the shareholders
7 it's at 4:30 our time."

8 Q. What do you say at the bottom of this exchange?

9 A. I said, "Okay. Airbus is giving us an additional 24 hours
10 to get this done."

11 Q. And what is that referring to?

12 A. We were trying to make a commitment to Airbus that the July
13 deliveries would have a financier attached to them.

14 Q. Was there anything about Mr. Sheridan's response here where
15 he says he's going to talk to his shareholder that led you to
16 believe that this month-to-month waiver was over?

17 A. No.

18 Q. Did it lead you to believe that negotiations with AMCK were
19 over?

20 A. No, actually quite the contrary. Negotiations were
21 continuing.

22 Q. This is May 1, 2020, at this time?

23 A. This is May 1st.

24 Q. Did you eventually reach an agreement with Airbus to move
25 the deliveries at the schedules -- to the schedules you

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Dempsey - Direct

1 represented to AMCK?

2 A. Yes, we got to an agreement on May 5.

3 Q. Did Mr. Sheridan ever respond to your May 1 text message
4 and get back to you?

5 A. He did not.

6 Q. I am going to show you now Joint Exhibit 142. Scrolling
7 down to the bottom.

8 Did you reach out to Mr. Sheridan again in connection
9 with negotiations?

10 A. Yes, I sent him a follow-up e-mail, I sent him a text on
11 May 1st and a follow-up e-mail on May 8. The follow-up e-mail
12 on May 8th set out one of the two options that I proposed to
13 him in the call, which was effectively trying to create some
14 balance between prepaid rent and deferred rent, so that I could
15 get a commitment from them to deliver aircraft in July.

16 Q. I see there is a fourth point on the top e-mail. Are these
17 connected, points one through three and four?

18 A. Yes, I noticed I had omitted point four, and I sent a
19 follow-up e-mail within an hour to inform him of the fourth
20 point.

21 Q. So had Frontier succeeded in getting a financier to take a
22 position that AMCK would have had in 2020?

23 A. Yes, we had replaced AMCK as financier on one of the
24 aircraft that Airbus had scheduled for the end -- for Q4. So
25 we had replaced them with an alternative lessor to step into

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Dempsey - Direct

1 their financing, so it gave AMCK more time on the final two
2 aircraft.

3 Q. Going down to the first of the two e-mails on May 8. Just
4 to the paragraph below point three.

5 What were you conveying there?

6 A. Consistent with the phone call I had with him that the
7 operating lease obligation that we would have been taking on,
8 had we extended those aircraft to 12 years, was significant and
9 it would reduce our ability to raise debt elsewhere. I was
10 reminding him of the conversation we had on the phone and why
11 we could not agree to their point three.

12 Q. At this point, had Mr. Sheridan indicated that the delivery
13 schedule that was proposed was unacceptable to AMCK?

14 A. He had not.

15 Q. Previously, Mr. Sheridan had wanted six-month deferrals,
16 but what was presented here seemed to meet their requirements
17 at this time, correct?

18 A. I had multiple conversations with Paul throughout April
19 where I had ensured he was aware of the challenges that getting
20 a six-month deferral with Airbus posed. And we worked really
21 hard throughout the period in order to get Airbus to move the
22 aircraft at least three months, and also to move one aircraft
23 out of 2020 into 2021. That was a significant ask, and a
24 significant concession on our behalf, and he had appreciated
25 that in phone calls, the effort we had made.

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Dempsey - Direct

1 Q. Did Mr. Sheridan provide a counter to this offer?

2 A. He did not.

3 Q. Did he tell you negotiations were over in any response to
4 this offer?

5 A. He did not.

6 Q. I am going to turn now to Exhibit 146.

7 This is an e-mail communication from Mr. Sheridan
8 copying to Mr. Thwaytes and Howard Diamond and copying you and
9 Mr. Fanning and Ms. O'Callaghan. What is this document if we
10 scroll down, please.

11 A. This is a termination notice.

12 Q. And the date is?

13 A. May 8.

14 Q. Do you recall the day of the week this was?

15 A. It was Friday.

16 Q. The time that appears on this e-mail is what?

17 A. It was 4:41 p.m. Mountain Daylight Time.

18 Q. So Denver?

19 A. Denver, yeah.

20 Q. What time of day would that have been in Ireland or Dublin?

21 A. Well, Ireland is seven hours ahead of Denver, so 11:41 p.m.

22 Q. Can you summarize your understanding of this termination
23 notice.

24 A. They put us in default on the Framework Agreement for
25 non-payment of rent on the 14 aircraft.

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Dempsey - Direct

1 Q. 14 aircraft?

2 What was your reaction when you received this, sir?

3 A. I was shocked. I've worked in this industry for a long
4 time, and the industry is built on relationships. And we had
5 had a very good relationship with AMCK to the point which they
6 had become our largest lessor. So I was shocked because we had
7 a waiver agreement in place. And in my opinion, that had not
8 been -- that had not ended. So, I was extremely surprised that
9 this came in.

10 Q. Just to be clear, did Frontier believe that the parties
11 eventually would reach a written agreement?

12 A. Yes, that was the concept behind the waiver. The waiver
13 was designed to give the parties time to obtain delivery delays
14 from Airbus, and also to agree a deal between -- Frontier and
15 AMCK to agree a deal. It was always the intent to have that
16 documented.

17 Q. If there had been no written agreement, when would, based
18 on your understanding of the month-to-month, repayment of rents
19 needed to be?

20 A. The month-to-month was a fluid construct to align to the
21 next aircraft delivery. And at the point when we put it in
22 place on April 7, the next aircraft delivery was happening
23 towards the end of May, and subsequently on April 11, 12, I had
24 notified Paul Sheridan that that aircraft in May had moved to
25 June. So as a result of that move from May to June, AMCK did

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Dempsey - Direct

1 not have to fund \$51 million in relation to that aircraft. And
2 we did not have to pay rent in relation to the 14 aircraft that
3 were already delivered to Frontier. That's how the waiver
4 worked and it's effectively designed to give the parties time
5 to get an agreement in place with Airbus, which was a real
6 challenge, and subsequently with AMCK.

7 Q. Prior to the time of receiving the termination notice, had
8 anyone from AMCK told Frontier that Frontier was in default?

9 A. No.

10 Q. Did you believe Frontier was in default on May 8?

11 A. I did not.

12 Q. Was Frontier monitoring its payment obligations to ensure
13 that it did not go into default with AMCK?

14 A. Yes, we have always been very careful to manage any
15 interruption such as a default on our business with AMCK or any
16 other supplier into the business.

17 Q. Besides this dispute, has Frontier ever been held in
18 default by another lessor?

19 A. Nope.

20 Q. Prior to the termination notice, had AMCK told Frontier
21 anyone at Frontier that the waiver period was over?

22 A. They had not.

23 Q. Prior to receiving this notice, had anyone at AMCK told
24 Frontier that negotiations were over?

25 A. No. Negotiations were clearly ongoing.

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Dempsey - Cross

1 Q. Prior to receiving the termination notice, had anyone at
2 AMCK told Frontier to pay outstanding rents immediately?

3 A. No, we had not received that request.

4 Q. After receiving the notice, did Frontier pay out all
5 outstanding rents?

6 A. Yes, we paid all rent on May 13.

7 Q. And has Frontier remained current on all rent with AMCK
8 since May 13?

9 A. Yes, we have.

10 MR. HOSENPUD: Thank you, sir. Nothing further at
11 this time.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q. Good morning, Mr. Dempsey.

15 A. Good morning.

16 Q. When you were the chief financial officer of Frontier
17 Airlines in 2020, who did you report to?

18 A. Barry Biffle, the chief executive.

19 Q. I understand that you were promoted to the position of
20 president of the company this past October. Is that correct?

21 A. That's correct.

22 Q. Who was the previous president?

23 A. Mr. Biffle.

24 Q. Does Mr. Biffle still serve as the CEO of Frontier
25 Airlines?

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Dempsey - Cross

1 A. He does.

2 Q. In your current position as president, do you still report
3 to Mr. Biffle?

4 A. I do.

5 Q. Now, you talked on direct about the fact that the first
6 delivery under the Framework Agreement occurred on March 16,
7 2020, correct?

8 A. That's right.

9 Q. And AMCK financed that delivery by paying \$51 million to
10 Airbus, correct?

11 A. Yes.

12 Q. And you've characterized that transaction as a cash
13 positive event for Frontier, right?

14 A. Yes.

15 Q. How much cash did Frontier receive in connection with that
16 delivery?

17 A. \$51 million from AMCK, and then we had an onward payment to
18 make to Airbus, and as you know, those occur simultaneously, so
19 we would have, I think, I can't remember the exact numbers, but
20 probably closes to \$5 million in a gain.

21 Q. I thought I heard you testify just a little earlier this
22 morning that Frontier received 13 to 15 million dollars in
23 connection with that transaction?

24 A. So, there's the upfront gain, and then there is also the
25 repayment of the predelivery payment to Airbus. Which can be

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Dempsey - Cross

1 somewhere between 9 and 13 million, depending on the aircraft
2 type.

3 Q. So let's break down those two components. Do you remember
4 for that transaction how much did Frontier receive as a gain?

5 A. Close to \$5 million.

6 Q. How much did Frontier receive as refunds of predelivery
7 payments?

8 A. Probably around 9 to 10 million dollars.

9 Q. Would you agree, sir, in terms of cash flow, that event was
10 cash flow positive for Frontier to the tune of more than
11 \$10 million?

12 A. Yes.

13 Q. And that was in the early days of the COVID-19 pandemic,
14 correct?

15 A. Yes.

16 Q. Would you agree there was a lot of uncertainty around that
17 time?

18 A. It was developing at that time, yes, quite quickly.

19 Q. We've also heard testimony in this case that there was some
20 urgency for Frontier to take delivery of this aircraft because
21 of a new tariff coming into effect; is that right?

22 A. That's correct.

23 Q. And who would have been responsible for paying that tariff?

24 A. That first aircraft was delivering in Europe. So the
25 responsibility to pay that tariff rested between either Airbus

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Dempsey - Cross

1 or Frontier.

2 Q. It rested between either Airbus or Frontier. Did you have
3 an understanding at the time of who would actually pay it?

4 A. Yeah, well, it was to deliver by a certain date in order to
5 avoid an increase in the tariff. The tariff was being paid by
6 Airbus prior to that date.

7 Q. And so, is it your testimony, sir, that Frontier would not
8 have been responsible for paying any part of the tariff if you
9 had missed that delivery date?

10 A. We would have been responsible for paying the increased
11 part of the tariff if we had missed that delivery date.

12 Q. So if you had missed that delivery date, it would have been
13 more expensive for Frontier, correct?

14 A. It would, yes.

15 Q. So was it important to Frontier to make the delivery at
16 that time?

17 A. It was important to Frontier and to Airbus to make that
18 delivery at that time.

19 Q. Did AMCK cooperate in making sure that that aircraft was
20 delivered on time?

21 A. Yes, they were familiar with what was going on, and the
22 tariff situation was familiar to everybody in the industry, it
23 was a public issue, so everybody was familiar with the change
24 in tariff rates that was occurring that week.

25 Q. Do I understand correctly, sir, after that first aircraft

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Dempsey - Cross

1 delivered, there were five remaining deliveries to be financed
2 under the Framework Agreement?

3 A. That's correct.

4 Q. Let me show you what's been marked as Joint Trial
5 Exhibit 21. This is a document that's headed Amendment No. 8
6 to the A320 family aircraft purchase agreement.

7 Do you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. It is an agreement between us and Airbus to amend the
11 original agreement that was dated September 30, 2011.

12 Q. And was this agreement entered as of March 16, 2020?

13 A. You'd have to go to the signature page, but I think you're
14 right.

15 Q. Do you see on this page in the text --

16 A. Sorry, yes.

17 Q. You see that date?

18 A. Yeah.

19 Q. Does that refresh your memory this was entered on March 16?

20 A. Yes.

21 Q. That was the first date as the first delivery that was
22 financed by AMCK?

23 A. Yes.

24 Q. As of the date of this agreement, how many aircraft
25 remained to be delivered by Airbus under that purchase

O4G3FRO1

Dempsey - Cross

1 agreement?

2 A. Probably around 160 aircraft.

3 Q. Does this Amendment No. 8 change the delivery dates for
4 some of those aircraft?

5 A. It would have, yes.

6 Q. Was it pushing delivery dates back in time or moving them
7 forward in time?

8 A. It predominantly wasn't designed to change aircraft
9 deliveries in any material fashion. It may have moved them by
10 a month here and there, but I don't recall this being a
11 material change in aircraft deliveries time-wise.

12 Q. But you just testified that this did change delivery dates,
13 correct?

14 A. I think it did to a small extent, yes.

15 Q. My question, sir, was did it move the dates back in time or
16 did it move the dates forward in time?

17 A. I would imagine it moved them later as opposed to earlier.
18 I don't have the details. I don't recall.

19 Q. This is amendment 8 to the agreement. Were there also
20 amendments 1 through 7?

21 A. Yes.

22 Q. And did any of those earlier amendments change the delivery
23 dates for aircraft under this purchase agreement?

24 A. I'm sure some of them do. Some of them would have added
25 additional aircraft to the purchase agreement, some of them

O4G3FRO1

Dempsey - Cross

1 would have changed the type of aircraft that were delivering
2 under the purchase agreement. So, a series of different
3 changes to the purchase agreement that -- this is 9 years in
4 existence at this point, you've had multiple changes. So
5 pretty typical.

6 Q. And so for those earlier amendments that moved the delivery
7 dates, did they move deliveries date back in time or did they
8 move them forward in time?

9 A. I don't recall.

10 Q. Let me show you appendix A of this amendment. And I think
11 we'll just start with the first page of that at the top. This
12 appears to show the scheduled delivery dates for each of the
13 aircraft under this agreement.

14 Is that understanding correct?

15 A. Yes.

16 Q. And I want to go to I think it is the next page where we
17 start to see deliveries scheduled in 2020. And I see at rank
18 52 there are three deliveries in March of 2020.

19 Which of these deliveries are the ones that were to be
20 financed under the Framework Agreement?

21 A. I don't remember the exact sequence numbers of the
22 aircrafts. I think 52, 53, 54 is familiar to me. Maybe 58 and
23 59, but I don't remember exactly.

24 Q. Your memory it was at least the three in March 2020, is
25 that correct?

O4G3FRO1

Dempsey - Cross

1 A. I think that's correct.

2 Q. Let me show you what's been marked as Joint Trial
3 Exhibit 24 which is the Framework Agreement and schedule 1 from
4 that agreement.

5 And Rishika, if you can put those side by side so we
6 can see them.

7 First, if you could focus on the right-hand side of
8 the screen, do you see this is schedule 1 from the Framework
9 Agreement?

10 A. Yes.

11 Q. And this shows the delivery months for each of the aircraft
12 covered by that agreement, correct?

13 A. Yes.

14 Q. And I see there are three in March of 2020, and then one
15 each in May, June, and August of 2020.

16 Do you see that?

17 A. Yes.

18 Q. So would you agree that this corresponds to deliveries in
19 Amendment No. 8, the amendment that was entered on the same
20 day?

21 A. I think so, yes.

22 Q. And I see there are other deliveries in May, June, and
23 August of 2020. Was there another leasing company expected to
24 finance those deliveries?

25 A. Yes.

O4G3FRO1

Dempsey - Cross

1 Q. Do you remember which leasing company that was?

2 A. I don't.

3 Q. Would you agree with me that after the delivery that took
4 place on March 16, that AMCK was expected to finance at least
5 the nexts two deliveries from Airbus?

6 A. Yes.

7 Q. And would you agree that as of that time, AMCK was expected
8 to finance five out of the next eight deliveries from Airbus?

9 A. Yes.

10 Q. Let me show you what's been marked as Joint Trial
11 Exhibit 28. It is the March 16 rent deferral letter that
12 Mr. Hosenbud showed you.

13 Now, you were cc'd on this letter, sir. Did you
14 participate in the drafting of this letter?

15 A. Not specifically, no.

16 Q. But you do recall that this letter went out, correct?

17 A. I do.

18 Q. And do you recall that Frontier was seeking from AMCK
19 deferral of rent through June 30, 2020, with repayment over
20 nine months beginning in July of 2020?

21 A. Is there a question? Sorry?

22 Q. I thought I --

23 A. I must have missed it.

24 Q. Let me ask it again.

25 Do you recall that this letter, in this letter

O4G3FRO1

Dempsey - Cross

1 Frontier was seeking deferral of rent through June 30, 2020,
2 with repayment over nine months beginning in July of 2020,
3 question mark?

4 A. Yes, that's correct.

5 Q. And Frontier also said it was willing to pay interest on
6 that amount; is that right?

7 A. Yes.

8 Q. And these changes that are requested in this agreement
9 would have modifications to Frontier's lease agreements
10 involving AMCK, correct?

11 A. Yes.

12 Q. And down at the bottom, towards the bottom of this page
13 there is a paragraph that says "The above concessions would be
14 documented in a mutually agreed deferral and concession
15 agreement."

16 Do you see that language?

17 A. Yes.

18 Q. Was it your expectation that any deferral agreement with
19 AMCK would be documented in a written agreement?

20 A. It was our expectation that we would eventually document a
21 deferral agreement with AMCK, and that's what the waiver
22 provided for on April 7.

23 Q. Documenting it in writing, was that typical in your
24 experience for modifications to aircraft lease agreements?

25 A. Yes.

O4G3FR01

Dempsey - Cross

1 Q. They're usually documented in writing, correct?

2 A. Eventually.

3 Q. I believe that you testified that Frontier made similar
4 rent deferral requests to its other lessors. Is that right?

5 A. Yes, we did.

6 Q. How many lessors was Frontier working with at that time?

7 A. I don't have the exact number, but I think it's around 20.

8 Q. And did Frontier reach agreement on rent deferral with
9 lessors other than AMCK?

10 A. We did.

11 Q. With all of them?

12 A. I don't think with every single one of them. But I think
13 with the vast majority of them, yes.

14 Q. When Frontier did reach agreement on rent deferral with
15 those other lessors, did it document that agreement in writing?

16 A. In most cases.

17 Q. Do you remember cases in which a rent deferral agreement
18 with another lessor at this time was not captured in a written
19 agreement?

20 A. Yes.

21 Q. How many of those instances do you recall?

22 A. This one on AMCK, and one other.

23 Q. Well, sir, I was asking about rent deferral agreements that
24 you reached with lessors other than AMCK.

25 A. One other.

O4G3FRO1

Dempsey - Cross

1 Q. So there is one you remember that was not committed to
2 writing?

3 A. Correct.

4 Q. What was the -- strike that.

5 But of the other roughly 20 lessors who agreed to rent
6 deferrals, those were all -- apart from that one case, the
7 agreements were captured in a written agreement, correct?

8 A. In some form or other, yes.

9 Q. Did the other lessors agree to the three months of rent
10 deferral that Frontier was requesting?

11 A. Not in every case, no.

12 Q. What was the range of deferral periods that was agreed with
13 other lessors?

14 A. I mean, some agreed to two months, some agreed to three
15 months, some agreed to more than three months. It really
16 depended on how the interaction went with them and the
17 negotiation around it.

18 Q. How about repayment period? What was the range of
19 repayment periods that Frontier agreed with other lessors?

20 A. I don't know the exact detail on every single deferral
21 agreement. But it was typically somewhere between six and nine
22 months after the deferral period had ended.

23 Q. And in situations where Frontier reached agreement on
24 deferral, what was the interest rate that Frontier agreed to
25 pay?

O4G3FRO1

Dempsey - Cross

1 A. It was a range of interest rates. I think as low as like
2 3 percent and maybe as high as 6, 7 percent. I don't have
3 exact data on that.

4 Q. You would agree that for the agreements reached with other
5 lessors, they all involved those three components, a deferral
6 period, a repayment period, and an interest rate on deferred
7 rent?

8 A. Yes.

9 Q. We've heard testimony in this case that AMCK had more
10 aircraft on lease to Frontier than any other lessor. Is that
11 correct?

12 A. I think that's accurate, yes.

13 Q. Does that mean that Frontier's deferral request would have
14 a bigger impact on AMCK than it would have on any other lessor?

15 A. I don't think that that's correct, no. I think you have to
16 look at it proportionally on the size of the rent deferral
17 request to the other deferrals in the AMCK portfolio.

18 Q. Well, we just established that AMCK had more aircraft on
19 lease to Frontier than any other lessor. Correct?

20 A. That's correct.

21 Q. So did it have -- strike that.

22 Did Frontier pay more in monthly rent to AMCK than it
23 paid to any other lessor?

24 A. I don't have that data. I would anticipate that it was
25 close to, but it really depends on the rent for the aircraft

O4G3FRO1

Dempsey - Cross

1 that you're comparing it to. But it was, it's reasonable to
2 assume it was at or near the highest dollar value of rent that
3 we were paying each month. But I can't tell you with accuracy
4 exactly if they were the highest total dollar rent value.

5 Q. Was it one of the two highest? Was AMCK one of the two
6 highest?

7 A. I would say probably top three or four dollar rent that was
8 going out of Frontier. It was the highest volume in terms of
9 aircraft numbers.

10 Q. Would you at least agree with me, sir, that the rent
11 deferral request was going to have a -- would have had a bigger
12 impact on AMCK than many of Frontier's other lessors?

13 A. No, I wouldn't agree with that.

14 Q. Why not?

15 A. Because it would really depend on the portfolio that they
16 had in place across their business, which I didn't have
17 visibility on.

18 Q. Why would it depend on the portfolio -- why didn't it just
19 depend on the amount that Frontier paid every month to AMCK?

20 A. But I have no way of telling how -- the impact it had on
21 their business. You are asking me to ascertain the impact it
22 had on their business. I don't have that data.

23 (Continued on next page)

O4GBFRO2

Dempsey - Cross

1 BY MR. BUTLER:

2 Q. Let me clarify, sir. I'm just asking in pure dollar terms.
3 Did the deferral request have a bigger dollar effect on AMCK
4 than it had on other lessors used by Frontier?

5 A. I don't have an answer to that question. I don't know.

6 Q. Did any of Frontier's other lessors finance an aircraft
7 delivery in March of 2020?

8 A. I don't believe so, no.

9 Q. And as of March 16, 2020, were any of Frontier's other
10 lessors expected to finance aircraft deliveries either later in
11 March or in April or May of 2020?

12 A. Yes, I think we did have other lessors scheduled to deliver
13 aircraft.

14 Q. We saw that there was another one scheduled for May at
15 least in that amendment number eight, correct?

16 A. I think that's right.

17 Q. I think we also established that AMCK was going to be
18 responsible for the next two deliveries, right?

19 A. I actually think that they were responsible for the next
20 five.

21 Q. Your memory is that AMCK was responsible for the next five
22 deliveries?

23 A. That's my recall. There may have been some noise around
24 the fourth or fifth aircraft in terms of another lessor
25 delivering it, but I do recall that they were -- those aircraft

O4GBFRO2

Dempsey - Cross

1 were delivering in a very close proximity. And so they were
2 either the next five or the next three plus very soon
3 thereafter an additional two.

4 Q. So would you agree with me that in these early days of the
5 pandemic, AMCK was in a unique position among Frontier's
6 lessors, in that it had just delivered an aircraft in March,
7 and it was expected to finance the deliveries of the next five
8 aircraft to Frontier?

9 A. Yes. We were conscious of that, hence we were working with
10 AMCK to defer those aircraft deliveries with Airbus.

11 Q. Let me show you what's been marked as Joint Trial Exhibit
12 47. This is a March 25, email from Qingqing Miao of Lane
13 Powell attaching a draft rent deferral agreement.

14 Do you know who Qingqing Miao was?

15 A. She works in Lane Powell.

16 Q. Was Lane Powell representing Frontier in this negotiation?

17 A. Yes.

18 Q. Did you review around the draft agreement that's attached
19 to this email around the time it was sent to AMCK?

20 A. I didn't.

21 Q. Let's look at the first page of that agreement. I think
22 it's the next page. And I want to focus your attention on the
23 first recital of this agreement.

24 Do you see that -- well, it looks like this draft
25 applies to only one of the aircraft leased to Frontier. Do you

O4GBFRO2

Dempsey - Cross

1 agree with that?

2 A. I would have to read it. But, I mean, I assume you're
3 right. I have not read this document. Do you want me to read
4 it now?

5 Q. Do you see in the recital --

6 A. Help me where you are on the lease.

7 Q. Certainly, sir. I'm pointing you to the first recital, and
8 do you see that there's a reference to the aircraft described
9 on schedule one?

10 A. Yes.

11 Q. Let's go to schedule one of the agreement.

12 And do you see on schedule one there is a description
13 of aircraft, and it says one Airbus model three, A320?

14 A. Yes.

15 Q. Do you interpret that language in this schedule to mean
16 that this draft agreement applies to only one of the aircraft
17 leased to Frontier?

18 A. I think that's correct, yes.

19 Q. Going back to page one of the agreement. I'd like to focus
20 your attention on the bottom of page one and carrying over to
21 page two. So maybe we can put them up together. It looks like
22 section two at the very bottom there refers to the deferred
23 lease of payments, and it looks like this drafts contemplates
24 the deferral of rent in April, May and June of 2020.

25 And then if you look below it talks about repayment

O4GBFRO2

Dempsey - Cross

1 over the next nine months at an interest rate of three percent.

2 Do you see those terms?

3 A. Yes.

4 Q. Is this draft agreement consistent with the rent deferral
5 request that Frontier made on March 16, 2020?

6 A. It does look consistent with it.

7 Q. Would you agree that the fact that this draft agreement was
8 sent over is also consistent with your expectation that a
9 written agreement would be signed?

10 A. It was always our expectation that eventually a written
11 agreement would be signed.

12 Q. Let me show you Joint Trial Exhibit 53. This is another
13 email from Qingqing Miao. This one dated April 1. It looks
14 like here she's circulating another draft deferral agreement.
15 Do you see that?

16 A. Yes.

17 Q. And do you have an understanding that the first draft
18 agreement that covered one aircraft was revised to be two
19 omnibus agreements covering multiple aircraft leased to
20 Frontier from AMCK?

21 A. I'm not aware of that. I wasn't involved in these
22 discussions at this time.

23 Q. So you don't recall a second draft agreement being sent
24 over that revised the original from one aircraft to 14
25 aircraft?

O4GBFRO2

Dempsey - Cross

1 A. I don't recall.

2 Q. Let me show you Joint Trial Exhibit 58, and we're up now to
3 April 3, 2020, and some of your negotiations with Paul
4 Sheridan.

5 This is an email sent to you by Mr. Sheridan, and you
6 talked about this earlier. You received this email, correct?

7 A. I did, yeah.

8 Q. The first line of this email says "We have discussed the
9 upcoming five, A320neo deliveries further with our shareholder
10 overnight." Who was AMCK's shareholder?

11 A. CK Assets.

12 Q. Did you understand that AMCK's shareholder CK Asset
13 Holdings was involved in the decision making about Frontier's
14 rent deferral request?

15 A. I assumed that the decision will be made at AMCK, and as
16 part of that decision, they may have to consult with their
17 shareholder, but I don't know their governing structure.

18 Q. Isn't Mr. Sheridan communicating to you in this email that
19 the shareholder is involved?

20 A. He's communicating that he has discussed it with his
21 shareholder. He didn't say he needed to get approval from his
22 shareholder.

23 Q. I understand he didn't say anything about approval, but was
24 your understanding at this time that AMCK's shareholder CK was
25 involved in some fashion in the discussions?

O4GBFRO2

Dempsey - Cross

1 A. Yes.

2 Q. Did Mr. Sheridan in fact tell you at various points in time
3 that he was discussing these proposals with his shareholder?

4 A. He did, yes.

5 Q. And where is AMCK's shareholder located?

6 A. I think Hong Kong.

7 Q. And Mr. Sheridan was based in Dublin Ireland, correct?

8 A. That's correct.

9 Q. Do you know what the time difference is between Dublin and
10 Hong Kong?

11 A. Now you're asking me a question I don't know, maybe eight
12 hours, seven hours, something like that.

13 Q. I'm told it's sevens hours sometimes of the year and eight
14 hours at other times of the year. Does that sound roughly
15 correct to you?

16 A. I don't know. All I know is that it's seven-hour time
17 difference from Denver to Ireland, and I know that it's about
18 11 hours from Denver to Hong Kong. I don't think those times
19 work in terms of what you're saying. Maybe it's 13 hours to
20 Denver, so six, seven hours to Hong Kong from Dublin, but I
21 don't know.

22 Q. Did you understand at this time that because of the time
23 difference between Dublin and Hong Kong, it sometimes took
24 Mr. Sheridan sometime to communicate with his shareholder?

25 A. I wasn't focused on it.

O4GBFRO2

Dempsey - Cross

1 Q. And this email from April 3, I think we discussed it at
2 length in this case. Mr. Sheridan offers to agree to some of
3 the terms of rent deferral that you requested, but strictly on
4 the basis that the sale leaseback arrangement is suspended for
5 six months. Was that your understanding of AMCK's position at
6 this time?

7 A. Yes.

8 Q. And at the bottom of this email it's been discussed again
9 at length in this cases, there's some avoidance of doubt
10 language.

11 Did you understand this to mean that Mr. Sheridan did
12 not intend this offer to be binding in any way on AMCK?

13 A. I mean, I said it earlier, this is typical boilerplate
14 language that you see from time to time in proposals that are
15 made.

16 Q. My question, sir, is did you understand that language,
17 whether it's boilerplate or not, to mean that Mr. Sheridan did
18 not intend to be bound in this email?

19 A. I understood that this was a proposal.

20 Q. And did you understand that it was a proposal that was not
21 binding on AMCK?

22 A. Well, that's what a proposal is. I understood it was a
23 proposal, yes.

24 Q. Is it your view that a proposal means that it's something
25 that is not binding?

O4GBFRO2

Dempsey - Cross

1 A. In this case I understood that it was a proposal that was
2 not binding if that helps you.

3 Q. Did you understand the fact that Mr. Sheridan included this
4 language in his email to you, did you understand that
5 Mr. Sheridan was being cautious at this time about having his
6 communications construed as binding commitments?

7 A. I did not focus on his language at the bottom of his email.

8 Q. Let me show you Joint Trial Exhibit 61, which appears to be
9 your response to Mr. Sheridan on April 6; is that correct?

10 A. Yes.

11 Q. And you're rejecting Mr. Sheridan's proposal and asking him
12 to reconsider; is that right?

13 A. Yes, we are negotiating.

14 Q. You say in the second line of this email "I can only deduce
15 that you will finance the aircraft deliveries and honor your
16 commitment to Frontier if we do not put a rent deferral in
17 place." Did I read that correctly?

18 A. Yes.

19 Q. What did you mean by that?

20 A. Exactly what I said. I can only deduce that you will
21 finance the aircraft deliveries and honor your commitment to
22 Frontier if we do not put a rent deferral in place.

23 Q. Was Frontier considering dropping its request for rent
24 deferral from AMCK?

25 A. We were negotiating with AMCK at this time, and so those

O4GBFRO2

Dempsey - Cross

1 negotiations were ongoing. AMCK was asking for a significant
2 concession from Frontier, which we had to then ask for
3 significant concession from Airbus. And so we were trying
4 to -- in the interest of the relationship we had with AMCK, we
5 were trying to accommodate their request as best we could. And
6 in return for that, we were looking for a rent deferral. There
7 was concessions on both sides that we were seeking, that they
8 were seeking from us, and we were seeking from them, and this
9 was part of that negotiation.

10 Q. Was one option for Frontier to drop its request for rent
11 deferral altogether?

12 A. That was always an option.

13 Q. Were you considering that option at this time?

14 A. At this time I don't believe so.

15 Q. Around this time, around April 6, did Frontier reach out to
16 alternative leasing companies because Frontier doubted that
17 AMCK would finance the upcoming deliveries?

18 A. Actually, we reached out to other lessors because AMCK told
19 us that they would like to have a deferral in time. In this
20 case if you look at the earlier email six months, so it's
21 incumbent on us to source an alternative lessor if they did not
22 show for the aircraft because we had an obligation with Airbus
23 to turn up for the aircraft delivery, for an aircraft that was
24 very close to completion.

25 And so the way this works is, once the aircraft is in

O4GBFRO2

Dempsey - Cross

1 delivery condition, it's tendered for deliver by Airbus, and so
2 this was happening at this time. So we were trying to
3 ascertain from AMCK if they were going to finance that next
4 delivery, and that was part of the discussions that we were
5 having.

6 Q. And was that because you had concern at this time that AMCK
7 would not finance the next delivery?

8 A. Well, they had asked us to put a six-month deferral in
9 aircraft delivery in place. So, yes, I did have concern.

10 Q. Were you concerned by April 6, that AMCK might terminate
11 the Framework Agreement?

12 A. No. The discussions that were going on at this time were
13 linked to them looking for relief from aircraft deliveries and
14 us trying to find a path to achieve that relief. It was not in
15 my mind that they would terminate the agreement.

16 Q. So you had concern that they might not finance the next
17 delivery, but not that they would terminate the Framework
18 Agreement; is that your testimony?

19 A. I was endeavoring to achieve a deferral in aircraft
20 deliveries so that AMCK could get relief from delivering
21 aircraft in the near-term.

22 I understood at that time the challenges that existed
23 in the marketplace given the pandemic was in full force at this
24 point.

25 Q. Did you understand at this time that if Frontier paid all

O4GBFRO2

Dempsey - Cross

1 of its rent on time, that AMCK would have no choice under the
2 Framework Agreement but to finance the upcoming deliveries?

3 A. Yes, but they had always -- they had a choice. They could
4 default on that agreement as well, but that was not in
5 discussion at this time.

6 Q. Did Frontier have the practical ability to pay rent to AMCK
7 in the month of April?

8 A. Yes, we did.

9 Q. So if you were concerned about AMCK financing the upcoming
10 delivery under the Framework Agreement, why didn't Frontier
11 just honor its commitment under the lease agreements and pay
12 the rent that was due?

13 A. We were in a discussion with AMCK at the time where AMCK
14 was looking for a concession of us to defer aircraft
15 deliveries, and we were looking for a concession of them to
16 defer rent. That was the discussion.

17 Q. Wouldn't you agree with me, sir, that Frontier could have
18 taken the approach of simply paying the rent and forcing AMCK
19 to perform under the Framework Agreement?

20 A. We could have done that, but we were operating on the basis
21 that they were looking for relief from that, and we were
22 looking for relief from rent. So there was symmetry in terms
23 of the concessions that we're trying to achieve between the two
24 parties.

25 Q. You emphasize in your testimony that the Framework

O4GBFRO2

Dempsey - Cross

1 Agreement was a binding commitment by AMCK?

2 A. Yes.

3 Q. Do you recall that?

4 A. Yes.

5 Q. Were the lease agreements for the 14 aircraft also binding
6 commitments?

7 A. Yes.

8 Q. And by asking for rent deferral, Frontier was asking for
9 concessions under those lease agreements, correct?

10 A. That's correct.

11 Q. And in reaction to that request, AMCK was asking Frontier
12 for concessions under the Framework Agreement, right?

13 A. That's correct.

14 Q. Was there anything wrong with AMCK asking for concessions
15 under the Framework Agreement?

16 A. No, we were negotiating.

17 Q. Let me show you Joint Trial Exhibit 62. This is on the
18 same day, April 6, and it appears to be sometime after your
19 email to Mr. Sheridan rejecting his proposal, and you ask for a
20 call ASAP. Do you see that?

21 A. Yes.

22 Q. And it looks like Frontier had two payments due on April 6;
23 is that right?

24 A. Yes.

25 Q. Would you agree that there was some urgency to your request

O4GBFRO2

Dempsey - Cross

1 for a call?

2 A. Yes.

3 Q. Without a deferral of some kind, Frontier could have been
4 in default after April 6; is that right?

5 A. Yes.

6 Q. Let me show you Joint Trial Exhibit 63, and this is
7 Mr. Sheridan's email to you a little bit later in the day
8 telling you about the ten business day deferral or the ten
9 working day deferral. Do you recall receiving that?

10 A. Yes, I do.

11 Q. And did you understand this agreement or waiver to mean
12 that Frontier didn't have to make any payments for at least the
13 ten business days through the 21st of April 2020?

14 A. Yes, I understood that. And I followed up with Paul
15 following this to have a conversation with him because ten
16 working days would not suffice to do the task that we had,
17 which is we needed time to get an arrangement in place with
18 Airbus to defer aircraft, and then time to negotiate between
19 AMCK and Frontier.

20 Q. Focusing on this email, would you agree there's no
21 ambiguity here, ten working days, no more, no less?

22 A. I agree.

23 Q. Let's talk about the April 7, call that you had with
24 Mr. Sheridan. On that call you say Mr. Sheridan agreed to a
25 month-to-month rent deferral; is that right?

O4GBFRO2

Dempsey - Cross

1 A. Yes.

2 Q. Who suggested the idea of month-to-month, was that you or
3 Mr. Sheridan?

4 A. I think it was me. It was linking it to aircraft
5 deliveries. His sensitivity was that we would be -- we'd have
6 no outstanding payments on rent at the point of the next
7 aircraft delivery. And so we were attempting to move those
8 aircraft from May into June into July and beyond at their
9 request.

10 And so the nature of the waiver that was put in place
11 was to facilitate that move in aircraft that was happening in
12 real-time as negotiations proceeded with Airbus. And so what
13 the April 7th call was effectively an extension of this email
14 where we needed time or space to get an agreement with Airbus
15 and actually have a discussion with AMCK around an agreement
16 with them, formal agreement with them on rent deferral. It in
17 effect gave us a window to the next aircraft delivery, a waiver
18 to the next aircraft delivery.

19 Q. Mr. Dempsey, my question was very simple, who suggested the
20 idea of month-to-month, was that you or Mr. Sheridan?

21 A. I think it was me.

22 Q. What were the exact words used by Mr. Sheridan when he
23 supposedly agreed to a month-to-month deferral?

24 A. His sensitivity was that we would be fully paid and current
25 on rent at the delivery of the next aircraft.

O4GBFRO2

Dempsey - Cross

1 Q. Were those his exact words, sir?

2 A. He said that consistently to me, including on that call.

3 Q. Do you recall that you said something different at your
4 deposition in this case in April of 2022?

5 A. I don't recall what I said in my deposition.

6 Q. Let me show you page 76 of your deposition. First, you do
7 recall your deposition, sir?

8 A. Say that again.

9 Q. You do recall your deposition, correct?

10 A. Yes.

11 Q. And you recall that you were under oath during that
12 deposition?

13 A. Yes.

14 Q. Page 76, line 10, I asked you, Do you remember what
15 Mr. Sheridan said about the month-to-month deferral idea?

16 You answered, Yes. He said that he would agree to a
17 month-to-month rent deferral.

18 Then I asked, Were those his exact words? What was
19 your answer?

20 A. I don't recall his exact words, but that was the essence of
21 what he said.

22 Q. Now, I want to try to understand what you understood
23 month-to-month to mean in the context of that call. You
24 testified yesterday that Mr. Sheridan agreed to deferral to the
25 earlier of July or the next aircraft delivery. Do you recall

O4GBFRO2

Dempsey - Cross

1 that?

2 A. Yes, but the primary date that we were looking at in the
3 waiver was the next aircraft delivery. That was the nearest
4 date that we were looking at.

5 Q. And then you said, and I'll point you to page 534 of the
6 transcript from yesterday, line 18. You said "My clear
7 understanding coming out of this call was that we had a
8 deferral in place, and that the earliest date that we had to
9 pay the rent was at the point of the next aircraft delivery.
10 That was my clear understanding at that time."

11 Do you recall that testimony from yesterday?

12 A. Yes.

13 Q. And then Mr. Hosenpud asked you, we're going to page 538,
14 line 22. He asked at the bottom of the page. Question, so I
15 may have confused you and the Court by asking about the
16 month-to-month. What was a trigger for payment on the
17 month-to-month rent deferral that was being sought by AMCK?
18 What was one trigger?

19 And your answer is on the next page at the top, and
20 you said, The next aircraft delivery. The earliest that we
21 would owe rent on the month-to-month basis was at the point of
22 the next aircraft delivery." Do you recall that testimony, sir?

23 A. Yes.

24 Q. So your understanding of the month-to-month that was
25 discussed on the April 7th call was a deferral of rent under

O4GBFRO2

Dempsey - Cross

1 the 14 lease agreements until the next aircraft delivery from
2 Airbus; is that right?

3 A. The next aircraft delivery with AMCK from Airbus.

4 Q. At this point did you know when that would be?

5 A. On April 7th, yes. We knew that it would be sometime in
6 May, likely the second half of May.

7 Q. Were you still negotiating with Airbus as of April 7th?

8 A. Yes, we were.

9 Q. So was the next delivery date still up in the air?

10 A. No. The earliest that the aircraft could deliver given the
11 closure of the Mobile plant was in May because the aircraft had
12 to go through its variety of inspections in order to achieve
13 delivery of the aircraft, and they would happen after the plant
14 in Mobile opened on April 29.

15 Q. I'm asking you, sir, about the actual delivery date. Was
16 the actual delivery date still to be determined by your
17 negotiations with Airbus?

18 A. Yes, but the earliest that the aircraft could deliver was
19 in May, and I informed Paul Sheridan of that and he understood.

20 Q. Maybe I should go back to your understanding because there
21 sounds like there might be a nuance to it.

22 Was your agreement -- was your understanding of the
23 month-to-month that it was tied to the earliest delivery date
24 as of April 7th?

25 A. It was tied to the next aircraft delivery which was now in

O4GBFRO2

Dempsey - Cross

1 May.

2 Q. It was then in May, but it changed, right?

3 A. Around April 11, I had following series of calls with
4 Airbus. They had agreed to move aircraft, that aircraft from
5 May to June, and other aircraft from June to July. And I
6 informed Paul Sheridan of that at that time immediately upon
7 receiving that news from Airbus.

8 Q. Did you know as of that call that that would be the actual
9 delivery date?

10 A. Paul was asking me to push them to move the aircraft as
11 long as possible, and I was continuing to negotiate with Airbus
12 to see if we could move that aircraft later than June. And I
13 recall around April 29, April 30, that I got confirmation of
14 Airbus that they maybe able to move it to July.

15 Q. So it sounds like you would agree that the next aircraft
16 delivery date was yet to be determined; is that right?

17 A. The earliest that the aircraft could deliver was in May
18 given the inspected that needed to occur on that aircraft in
19 order to ensure it was airworthy. The various test flights
20 that have to occur on that aircraft, including Airbus and their
21 pilots flying the aircraft to confirm it's airworthy, and our
22 pilots flying the aircraft to ensure that it's airworthy. And
23 to rectify any issues that exist in the inspection of the
24 aircraft, and that takes time.

25 And so with the Mobile plant opening on April 29th,

O4GBFRO2 Dempsey - Cross

1 the aircraft was slated to deliver at the earliest in May,
2 likely the second half of May.

3 Q. You keep responding about the earliest date. I'm asking
4 you, sir, about the actual date.

5 Did you know the actual date of the next delivery from
6 Airbus as of April 7, 2020?

7 A. This is how aircraft get delivered. You identify a month
8 that the aircraft is delivering. Closer to that time the
9 manufacturer identifies a date, and it's all dependent on the
10 inspection of the aircraft and the aircraft can move as a
11 result of that.

12 What we were informed by Airbus at this point was that
13 the aircraft would deliver in May, and potentially -- sorry.
14 The aircraft would deliver in May, likely the second half of
15 May, and we were still negotiating with Airbus to achieve the
16 concession that AMCK was asking us to do, and those
17 negotiations were ongoing.

18 Q. Let me try this a different way. What was the month of the
19 actual next delivery from Airbus?

20 A. The actual delivery date of that aircraft was July.

21 Q. Did you know on April 7, 2020, that that aircraft would
22 deliver in July?

23 A. No. I was told by Airbus that that aircraft would deliver
24 in May.

25 Q. So isn't it true, Mr. Dempsey, that as of April 7th, you

O4GBFRO2

Dempsey - Cross

1 did not know when the next aircraft would be delivered by
2 Airbus?

3 A. I was informed by Airbus that that aircraft would deliver
4 at the earliest in May, likely the second half of May.

5 Q. But your understanding of the month-to-month was that it
6 would extend until the actual delivery of the first aircraft,
7 correct?

8 A. Yes, it was fluid based on the date that the actual
9 delivery of the -- when the actual aircraft -- the delivery of
10 the aircraft would occur.

11 Q. It was fluid, so the period of time was uncertain; is that
12 right?

13 A. Yes.

14 Q. Do you recall that you took a different position on that at
15 your deposition in April of 2022?

16 A. You can show me the deposition of April.

17 Q. Certainly. Let's look at page 77 of your deposition. I'll
18 direct your attention to line 15.

19 I asked you, So was it your understanding that this
20 was an indefinite deferral of rent under your agreement with
21 AMCK. What was your response?

22 A. No, it was a fluid situation, but clearly at this point it
23 was for the month of April.

24 Q. And when you used the word "fluid" here, did you mean that
25 the timing of the next delivery was uncertain?

O4GBFRO2

Dempsey - Cross

1 A. Yes.

2 Q. But you said at your deposition that the agreement with
3 Mr. Sheridan was for the month of April, correct?

4 A. The aircraft, the timing of the aircraft delivery was
5 fluid, and the repayment of the deferral or the waiver was tied
6 to the aircraft -- the next aircraft delivery. That was at
7 this point by April 7th in May.

8 Q. Mr. Dempsey, did you testify at your deposition that at
9 this point it was for the month of April?

10 A. April ran towards the outstanding item at that time.

11 Q. Let me direct your attention to page 79 of your deposition,
12 line 10. I asked you, When you use the term "month-to-month,"
13 does that mean that basically you're agreeing one month at a
14 time. So first let's agree to the end of April, then later
15 we'll agree to the end of May if it's necessary? What was your
16 answer?

17 A. Correct.

18 Q. So at your deposition you told me that the month-to-month
19 arrangements would begin with an agreement on rent deferral for
20 the month of April; isn't that true?

21 A. The waiver that was put in place on April 7th contemplated
22 a repayment of that rent outstanding at the next aircraft
23 delivery. And so if the aircraft delivery went from the end of
24 April through to the end of May, from the end of May through to
25 the end of June, the waiver would move with that. That was why

O4GBFRO2

Dempsey - Cross

1 it was termed a month-to-month because it was linked to the
2 aircraft delivery, the repayment of that rent deferral was
3 linked to the aircraft delivery.

4 Q. Mr. Dempsey, didn't you tell me at your deposition that the
5 month-to-month arrangement would begin with an agreement for
6 the month of April?

7 A. The rent was outstanding for the month of April, that's
8 what we were talking about at the time. But the way the waiver
9 worked, as the aircraft -- it was based on when the aircraft
10 would deliver. And the aircraft was rolling because it was a
11 fluid discussion with Airbus. That aircraft at the point when
12 I put an agreement in place with Paul Sheridan was now in May,
13 and so the aircraft would need to move out of May to June, and
14 that month-to-month deferral waiver would move with that
15 aircraft.

16 AMCK was getting a concession of Frontier that they
17 didn't have to finance that AMCK, and we were getting a
18 reciprocal concession of AMCK that we didn't have to pay rent
19 until the delivery of that aircraft, and that's when the waiver
20 would end.

21 Q. Mr. Dempsey, did you say any of that at your deposition
22 when you answered my question about whether the first agreement
23 was to the end of April?

24 A. I answered your question because you caveated with, If it's
25 necessary, and I answered it correct.

O4GBFRO2

Dempsey - Cross

1 MR. HOSENPUD: Your Honor, sorry to interrupt,
2 counsel. May the testimony following that testimony
3 highlighted by counsel be read from the point of line 16 on 79
4 to the point of page 79 to page 80, line 6. So line 16 on 79
5 through page 80, line 6.

6 THE COURT: Sure.

7 MR. BUTLER: We'd be happy to display it if
8 Mr. Hosenpud would like to read it.

9 MR. HOSENPUD: Yes.

10 "Q. And what is the -- so if that's the deferral that you
11 talked about with Mr. Sheridan, what did you discuss about
12 repayment?

13 "A. We said that we would solve that in the overall deal we
14 were putting together.

15 "Q. Did you discuss during your call on April 7, the repayment
16 period for the rent deferred for the month of April?

17 "A. I don't recall it being as granular as discussing exactly
18 when we would repay it and what AMCK at the time were proposing
19 to us or developed into and around that time was -- and we had
20 to be current on all our rent in order to deliver the
21 aircraft."

22 BY MR. BUTLER:

23 Q. Mr. Dempsey, did your understanding of the month-to-month
24 arrangement change between the time of your deposition in April
25 2022 and today?

O4GBFRO2

Dempsey - Cross

1 A. No.

2 Q. Do you recall that you took a slightly different position
3 on what month-to-month means in the declaration that you signed
4 in connection with summary judgment in this case?

5 A. I don't recall.

6 Q. Well, let me show you your declaration from this case.
7 It's dated December 9, 2022, and I want to direct your
8 attention to paragraph 15 of that declaration.

9 And you say beginning in the third line "My
10 understanding was that this month-to-month agreement would last
11 until all negotiations were complete. And that during that
12 time, Frontier did not need to make monthly rent payments on
13 the original leases." Did I read that correctly?

14 A. Yes.

15 Q. Would you agree that this understanding of the
16 month-to-month is different from the understanding you're
17 expressing today that it would last until the next aircraft
18 delivery whenever that might be?

19 A. If you read the second sentence it says, Even on this April
20 7th call, we both expected this month-to-month arrangement to
21 extend into May 2020, because it would take a long time to work
22 out a delivery deferral with Airbus, and it was already
23 apparent that the next aircraft under the Framework Agreement
24 would not be delivered until May 2020 at the earliest.

25 So, yes, that's my understanding. That's what I've

O4GBFRO2

Dempsey - Cross

1 testified to.

2 Q. In this declaration you testified that the month-to-month
3 would last until all negotiations were complete, correct?

4 A. Yes, and that we would need to -- the earliest we would
5 make a repayment was at the next aircraft delivery.

6 Q. But was the month-to-month an agreement to defer rent until
7 all negotiations with Airbus and AMCK were complete?

8 THE COURT: Would delivery be made if all arrangements
9 had not yet been agreed on?

10 THE WITNESS: Potentially, but it would have been --
11 it would have occurred if all negotiations had been complete,
12 yes.

13 THE COURT: That would be before the delivery in the
14 completion of negotiation?

15 THE WITNESS: We were endeavoring to complete a
16 negotiation as soon as possible. We were continuing to
17 negotiate in May with Airbus and with AMCK on this agreement.
18 So, yes, my understanding and clear understanding at the time
19 was that we had a waiver that was in place until the aircraft
20 delivered. And at the point of the delivery of an aircraft, if
21 we didn't reach an agreement with AMCK on -- if we didn't reach
22 an agreement to defer aircraft with Airbus and we didn't reach
23 an agreement with AMCK, that we would have to --

24 THE COURT: My question is very simple. When you said
25 all negotiations would be complete, was it not your concept

O4GBFRO2 Dempsey - Cross

1 that that would occur before the delivery of the plane?

2 THE WITNESS: Yes, that would occur before the
3 delivery of the plane.

4 THE COURT: Sounds to me like common sense.

5 THE WITNESS: Yes, that's correct.

6 BY MR. BUTLER:

7 Q. Was it possible, Mr. Dempsey, that the next delivery from
8 Airbus could occur without any agreement with AMCK?

9 A. The waiver that was put in place basically gave a space to
10 get an agreement in place with Airbus to defer aircraft. If
11 that agreement failed and the aircraft was due to deliver in
12 May, like Airbus had indicated to us, then we would have had to
13 repay the rent at that aircraft delivery, the rent that was
14 deferred in the waiver period.

15 Q. My question, sir, is suppose that you had never been able
16 to reach agreement with AMCK and the next delivery arose, what
17 would be the end date of the deferral in that scenario?

18 A. At the point of delivery of the next aircraft.

19 Q. Regardless of whether negotiations were complete, correct?

20 A. That's correct.

21 Q. Setting aside the time period for the deferral which is
22 what we've been talking about, did you discuss with
23 Mr. Sheridan on that April 7th, call the repayment period for
24 deferred rent?

25 A. We discuss that he wanted us to be current on rent, on all

O4GBFRO2

Dempsey - Cross

1 outstanding rent at the point of the next aircraft delivery.

2 Q. Let me show you page 79 from your deposition beginning at
3 line 22. I asked you, Did you discuss during your call on
4 April 7th, the repayment period for the rent deferred for the
5 month of April?

6 And your answer was -- goes onto the next page. You
7 said, "I don't recall it being as granular as discussing
8 exactly when we would repay it, and what AMCK at the time was
9 proposing to us or developed into around that time was a -- and
10 we had to be current on all our rent in order to deliver the
11 aircraft." Did I read that answer correctly?

12 A. Yes.

13 Q. So which was it, was it not as granular as that, or did you
14 have a discussion of the repayment period?

15 A. So the waiver was put in place in order to give us time to
16 negotiate an agreement with Airbus, but also with AMCK. And
17 that agreement with AMCK would have governed the repayment of
18 rent.

19 The overriding condition in the waiver was if we
20 didn't get to an agreement on the repayment of rent in that
21 negotiation, that we would have to be current in all our rent
22 in order to deliver the aircraft, and that is what I'm saying
23 there.

24 Q. Was there any discussion on your call with Mr. Sheridan
25 about the interest rate Frontier would pay on deferred rent?

O4GBFRO2

Dempsey - Cross

1 A. I don't recall a discussion on it at that time.

2 Q. Did you expect to pay interest on deferred rent?

3 A. Yes, we did.

4 Q. And did you have any interest rate in mind at that time?

5 A. That was for negotiation. We were flexible.

6 Q. When Frontier actually did pay the rent for the month of
7 April, which I believe you said was the middle of May 2020, did
8 Frontier pay any interest on that amount?

9 A. We did not. We paid the rent that was due.

10 Q. Did you expect the month-to-month arrangement that you
11 discussed with Mr. Sheridan to be documented in a written
12 agreement?

13 A. I had a verbal agreement with Mr. Sheridan on the call on
14 April 7th, so I didn't expect that aspect of it to be
15 documented.

16 I did expect the written agreement that we were
17 negotiating as part of the framework around the waiver that we
18 were negotiating with Airbus and AMCK, I did expect that to be
19 documented.

20 Q. Well, the supposed verbal agreement that you had with
21 Mr. Sheridan, why didn't you expect to document that in writing
22 in some form?

23 A. Well, I was talking to the chief executive of AMCK.

24 Q. What difference does that make?

25 A. He's an officer of AMCK, and so he had given us a verbal

O4GBFRO2

Dempsey - Cross

1 agreement to have a waiver at that time.

2 Q. When you agreed on other rent deferral agreements with
3 other lessors, weren't you also dealing with senior executives
4 of those companies?

5 A. Yes.

6 Q. And yet your practice was to document those agreements in
7 writing, correct?

8 A. Well, I testified earlier that we didn't in all occasions
9 that, one, discussion with another similar leasing company, we
10 had a verbal agreement in that case as well.

11 Q. After your April 7th call with Mr. Sheridan, did you send
12 an email or any other kind of communication to confirm what you
13 had discussed?

14 A. I did not.

15 Q. And why didn't you send any email to confirm the terms of
16 your supposed verbal agreement?

17 A. I have known Paul for sometime, and I trusted that his word
18 was good. He was the chief executive of AMCK.

19 Q. Was it because you expected this verbal discussion to be
20 documented in a written agreement to be negotiated?

21 A. It didn't need to be documented in a written agreement. It
22 was an agreement between two principals that were parties to
23 it. I certainly expected the formal agreement that we were
24 negotiating with Airbus and also the formal agreement that we
25 would have negotiated with AMCK on the back of Airbus, that

O4GBFRO2

Dempsey - Cross

1 those two documents were negotiated and documented.

2 Q. And I guess you would agree that AMCK and Frontier never
3 did enter a written agreement on this month-to-month
4 arrangement, correct?

5 A. We were continuing to negotiate in early May.

6 Q. My question, sir, is, was there ever a written agreement
7 reflecting the month-to-month arrangement?

8 A. No, we were continuing to negotiate in May.

9 Q. All right. I'd like to move onto events immediately after
10 this April 7th call. And on the Frontier side of things,
11 there's an exchange of text messages that is relevant, so I'm
12 going to show you Joint Trial Exhibit 73. And we'll put these
13 up side by side because we have them produced in this manner
14 with all of your text on one page and all Mr. Fanning's on
15 another page.

16 Do you recognize this to be a text exchange that you
17 had with Mr. Fanning after your discussion with Mr. Sheridan?

18 A. Yes.

19 Q. And you say in your message that you just spoke to Paul
20 Sheridan and he has agreed to do the deferral on a
21 month-to-month basis, correct?

22 A. That's correct.

23 Q. And Mr. Fanning responds, "Okay. Good. Anything mentioned
24 on the repayment period? And are they going to send our
25 revised agreement over?"

O4GBFRO2

Dempsey - Cross

1 Did you understand Mr. Fanning to be asking about your
2 call with Mr. Sheridan?

3 A. Yes.

4 Q. Do you know what Mr. Fanning was referring to by, "Our
5 revised agreement?"

6 A. I think he would have been referring to the rent deferral
7 agreement that was drafted by Lane Powell.

8 Q. And we saw earlier that there was a revised agreement from
9 Lane Powell sent over on April 1, 2020, correct?

10 A. I think that's correct, yes.

11 Q. And you respond to Mr. Fanning, "No, but we should stick to
12 nine months from July 1. Let's get a draft to him." Did I read
13 that correctly?

14 A. Yes.

15 Q. And I believe you testified yesterday that this response
16 had nothing to do with the month-to-month arrangements
17 discussed with Mr. Sheridan. Is that still your testimony
18 today?

19 A. My understanding of this text is that it is linked to the
20 agreement with AMCK on the deferral of rent; that the
21 month-to-month waiver allowed this to happen. So we're capable
22 of getting time to negotiate with Airbus, and also time with
23 AMCK. And so the formal revised agreement I was referring to
24 was linked to -- I assume was linked to that formal agreement
25 that we were talking about.

O4GBFRO2

Dempsey - Cross

1 Q. Mr. Dempsey, please focus on my question. Is it still your
2 testimony that this text response to Mr. Fanning had nothing to
3 do with the month-to-month arrangement?

4 A. Well, the month-to-month arrangement was a framework that
5 enabled negotiations to occur with Airbus and with AMCK. And
6 when we're talking about a draft agreement with AMCK, it's part
7 of that framework where we would actually negotiate a payment
8 period with AMCK.

9 Q. Do you recall at your deposition you indicated that this
10 response did relate to the month-to-month arrangement?

11 A. I don't recall.

12 Q. Well, let me show you your deposition, page 83, line 13.
13 I said "Going back to your side of the conversation, it looks
14 like you write back at 11:03 a.m., No, but we should stick to
15 nine months from July 1. Let's get a draft to him."

16 Did I read your response correctly?

17 A. Yes.

18 Q. And you answered yes. Thank you.

19 And I started the next question, Does that refresh
20 your recollection -- and you interrupted me, and what did you
21 say?

22 A. Sorry. I mean, I think that answers your earlier question,
23 so we must not have spoken about the repayment period, and my
24 suggestion was nine months from July.

25 Q. So in that answer you indicated that your response to

O4GBFRO2

Dempsey - Cross

1 Mr. Fanning related to the discussion that you had with
2 Mr. Sheridan, correct?

3 A. Yes.

4 Q. And then I asked you at the beginning of the page, or the
5 end of the page, sorry, line 25, and then carrying over to the
6 next page: My question, sir, is does this refresh your
7 recollection that you expected a written agreement to be
8 entered reflecting the month-to-month arrangement?

9 What was your answer?

10 A. I suggested that we get a draft of that arrangement, yes,
11 to them.

12 Q. So at your deposition you told me that you suggested
13 getting a draft of the month-to-month arrangement to AMCK,
14 correct?

15 A. I agree, yes.

16 Q. Well, did something change between your deposition and
17 today to effect your memory of what occurred on that April 7
18 call?

19 A. No. My recollection is we had moved on from the waiver
20 that was put in place, and we were now dealing with -- quickly
21 dealing with an Airbus request from AMCK to defer aircraft, and
22 a formal agreement with AMCK, and that's what we were working
23 on. So that's what I had understood that that text was
24 referring to, and that's what I was referring to nine months.

25 Q. At your deposition line nine I went onto ask you, And in

O4GBFRO2

Dempsey - Cross

1 your response to Mr. Fanning, you also clarify that you did not
2 discuss the repayment period with Mr. Sheridan, correct?

3 What was your answer?

4 A. That's correct.

5 Q. And then I asked, And your direction to Mr. Fanning is that
6 you should insist, that Frontier should insist on a nine-month
7 repayment period. Is that right?

8 A. That's correct.

9 Q. What was your answer?

10 A. That was my suggestion.

11 Q. By the way, I thought that you said that your understanding
12 of the month-to-month was that Frontier needed to be current on
13 all rent before the next delivery; is that right?

14 A. That is correct.

15 Q. At this point, April 7th, when was the next delivery
16 expected from Airbus?

17 A. Towards the end of May.

18 Q. Towards the end of May. That's much sooner than nine
19 months from July 1, correct?

20 A. Yes. My recollection is that the longer-term agreement was
21 being negotiated with AMCK as part of the waiver framework that
22 was put in place. And that's what the repayment period is
23 linked to. And you see negotiations back and forth throughout
24 April in relation to the repayment period, which was nine
25 months, six months, four months, and a variety of different

O4GBFRO2

Dempsey - Cross

1 negotiations between us and AMCK. And this was an internal
2 conversation discussing what our next steps were with AMCK.

3 Q. Well, sir, when you proposed to Mr. Fanning in this text
4 exchange that we should stick to nine months, weren't you
5 proposing a repayment period that went far beyond the next
6 expected delivery from Airbus?

7 A. That was part of the negotiations that we were having with
8 AMCK. In fact, I made multiple different suggestions
9 throughout April where I was paying back 50 percent of the rent
10 at the next aircraft delivery, and 75 percent of the rent on a
11 further aircraft delivery. I made an offer to pay all
12 outstanding rent.

13 We made multiple offers and proposals to AMCK
14 throughout April, and this was just an internal dialogue linked
15 to negotiations that were ongoing.

16 Q. Mr. Dempsey, isn't it true that as of April 7 you were
17 proposing to not repay the rent until long after the next
18 delivery from Airbus?

19 A. In the context of the Framework Agreement, yes. In the
20 context of the framework for the waiver agreement, yes. We
21 were proposing at that point to repay the rent with interest
22 over nine months.

23 Q. Going back to Mr. Fanning side of the conversation on the
24 right-hand side of this text exchange. He says, he responds to
25 you, "They have our draft. I'll follow-up with Jane."

O4GBFRO2

Dempsey - Cross

1 Did you understand Mr. Fanning to be telling you that
2 AMCK already had a draft rent deferral agreement from Frontier?

3 A. Yes.

4 Q. And I guess, did you expect that draft to be modified to
5 reflect the month-to-month arrangement that you say

6 Mr. Sheridan agreed to?

7 A. It could have been adopted to reflect an agreement that we
8 were putting in place, yes.

9 Q. And you respond to him "He was going to call Jane after we
10 spoke." Did I read that correctly?

11 A. Yeah.

12 Q. Do you recall Mr. Sheridan telling you that he was going to
13 speak to Jane O'Callaghan about this after his call?

14 A. Yes.

15 Q. Did you expect Mr. Fanning to follow-up with Jane
16 O'Callaghan about the month-to-month arrangement?

17 A. I was expecting him to follow-up with Jane about the
18 longer-term agreement that we were trying to put in place with
19 AMCK.

20 Q. My question, sir, is did you also expect him to follow-up
21 with Ms. O'Callaghan about the month-to-month arrangement?

22 A. I didn't instruct him to do so, but he may have discussed
23 it with her. That's not something I'm aware of.

24 Q. That was going to be my next question.

25 Do you know whether Mr. Fanning did follow-up on the

O4GBFRO2

Dempsey - Cross

1 month-to-month arrangement?

2 A. I have no idea if he did.

3 Q. Did you ever follow-up with Mr. Fanning on the
4 month-to-month arrangement?

5 A. We would have spoken at that time.

6 Q. Well, after the call, did you describe the month-to-month
7 concept to others at Frontier?

8 A. Yes.

9 Q. Did you discuss it with Mr. Thwaytes?

10 A. I would have discussed it with Mr. Thwaytes, yes.

11 Q. Did you discuss it with Mr. Fanning?

12 A. I would have, yes.

13 Q. Would you expect that Mr. Thwaytes and Mr. Fanning would
14 have the same understanding of month-to-month as you do?

15 A. I would expect them to have a similar understanding.

16 Q. Let me show you what's been marked as Joint Trial Exhibit
17 79. This is an email from Jane O'Callaghan dated April 9th to
18 Robert Fanning, Sharath Sashikumar and Spencer Thwaytes, and it
19 attaches a draft deferral letter for one of the 14 aircraft.

20 Do you see that?

21 A. Yes.

22 Q. Did you receive a copy of this email and the attached
23 agreement around the time that it was sent?

24 A. I don't recall.

25 Q. But Mr. Fanning, Mr. Sashikumar, Mr. Thwaytes all report to

O4GBFRO2

Dempsey - Cross

1 you directly or indirectly; is that right?

2 A. That's correct.

3 Q. Going to the first page of the agreement, or the letter
4 agreement, I want to direct your attention to the bottom of the
5 first page section 2.1.

6 Would you agree that this proposal from the AMCK side
7 proposes to defer only one payment of rent, the one that's due
8 in April?

9 A. That's their proposal, yes.

10 Q. Did anyone on your team tell you that AMCK had forwarded a
11 draft agreement proposing a rent deferral for the month of
12 April only?

13 A. They may have discussed it with me at the time, yes.

14 Q. Who told you about that?

15 A. I don't recall. I would assume it was either Robert or
16 Spencer.

17 Q. But you do have a recollection that you received a draft
18 agreement proposing deferral for the month of April from AMCK;
19 is that right?

20 A. I don't recall. I assume I was made aware of it. I didn't
21 receive it directly.

22 Q. Well, going to the next page of this exhibit section 2.1.2
23 at the top. Do you see that AMCK was asking for six percent
24 interest on deferred rent?

25 I'm sorry. I said 2.1.2, but I started with 2.1.1A.

O4GBFRO2

Dempsey - Cross

1 Do you see that AMCK was requesting six percent rent on
2 deferred interest?

3 A. Yes.

4 Q. And going down to 2.1.2, do you see that they were
5 proposing repayment on or before the 24th of July, 2020?

6 A. Yes.

7 Q. Did anyone tell you that AMCK had offered to defer the
8 April rent with a repayment period of three months and an
9 interest rate of six percent?

10 A. I'm sure I was made aware of it at the time.

11 Q. To your knowledge did Frontier ever respond to this
12 proposed agreement from AMCK?

13 A. Not to my knowledge specifically on this proposed
14 agreement, but there were multiple proposals going in either
15 direction throughout the month of April that would have altered
16 some of these terms in the wider discussion around the
17 agreement on repayment and any concessions that AMCK was
18 seeking.

19 MR. BUTLER: Your Honor, I see we're coming up to the
20 1:00 hour, and this would be a good breaking point for me if it
21 suits your Honor.

22 THE COURT: Very good. We'll resume at 2:15. We're
23 in recess.

24 (Recess)

O4G3FRO3

Dempsey - Cross

AFTERNOON SESSION

2:15 p.m.

MR. BUTLER: May I proceed, your Honor?

THE COURT: Yes.

BY MR. BUTLER:

Q. Mr. Dempsey, I gather that you were negotiating with Airbus throughout the month of April 2020 to defer deliveries under the purchase agreement. Is that right?

A. That's correct.

Q. And the final agreement that you reached with Airbus was entered on I think you said May 5, 2020. Is that right?

A. Yes.

Q. Was that Amendment No. 9 to the purchase agreement?

A. I don't recall, but I think sequentially it makes sense.

Q. And I think that you testified yesterday that Amendment No. 9 was negotiated in response to AMCK's request to defer the deliveries under the Framework Agreement, is that right?

A. It's covered AMCK's aircraft moves and other aircraft moves that were afoot with Airbus given their change in production capacity across the world. So they reduced their production capacity by 40 percent in response to the COVID pandemic, and so, that had to be reflected in delivery schedules in our contract.

Q. So some of the changes in that amendment arose from the deferrals requested by AMCK, and some of them resulted from

O4G3FRO3

Dempsey - Cross

1 issues at Airbus. Is that right?

2 A. That's correct.

3 Q. Did Frontier have any other reason for negotiating those
4 deferrals from Airbus?

5 A. We were at the time trying to make sure that the growth
6 profile of the airline as we emerge from the pandemic was sort
7 of a clean growth percentage trajectory. And that's driven by
8 the aircraft deliveries. And so what we were attempting to do
9 is take aircraft that were being moved for AMCK and for other
10 reasons, and smooth out that growth profile so you had a
11 consistent growth profile in the airline over the next couple
12 of years.

13 Q. So were some of the deferrals negotiated with Airbus for
14 Frontier's own business reasons?

15 A. They were two fold. Setting aside the AMCK aircraft that
16 were negotiated, there were aircraft that were moved either for
17 production reasons in Airbus, or for Frontier's reasons, yes.

18 Q. So it sounds like at least some of those deferrals were for
19 Frontier's own business reasons, correct?

20 A. Yes, yes, that's correct.

21 Q. I want to show you what's been marked as Plaintiff's
22 Exhibit 2. Which I believe is a text exchange with Robert
23 Fanning. I think you've looked at before.

24 Do you recognize this as a text that you received from
25 Robert Fanning on the 25th of April, 2020?

O4G3FRO3

Dempsey - Cross

1 A. It was sent to my number, yes.

2 Q. And Mr. Fanning writes, "Jimmy, finally a reply from Jane
3 this morning."

4 Then there is some text below that. Do you understand
5 that Mr. Fanning pasted texts from a texts from Jane
6 O'Callaghan into this text to you?

7 A. Yes, I think that's implied in his opening sentence.

8 Q. And she says in the first sentence of her portion of the
9 text, "We struggled at our board meeting last week." Do you
10 see that?

11 A. Yes.

12 Q. Were you aware that AMCK held a board meeting during the
13 week of April 20, 2020, to discuss Frontier's rent deferral
14 request?

15 A. I don't recall at that time. Probably not. No.

16 Q. Do you have any reason to doubt that AMCK had a board
17 meeting that week?

18 A. I have no reason to doubt.

19 Q. She goes on to describe two basic elements of what AMCK's
20 board and shareholder want. Do you see that?

21 A. Yes.

22 Q. And number 1 is that all rent payments are up to date by
23 the time of the next financing. Is that right?

24 A. It actually says, "All to fund any new delivery unless all
25 payments are up to date." Yes, that's consistent with what

O4G3FRO3

Dempsey - Cross

1 they have said previously.

2 Q. I want to ask you that. Number 1 is consistent with what
3 you said was a consistent message from Paul Sheridan, correct?

4 A. This conversation was between Robert and Jane. But I had
5 heard that consistently throughout the process, that they would
6 like all outstanding rent to be paid at the next aircraft
7 delivery.

8 Q. Element number 2 as described here is some additional quid
9 pro quo with respect to the remaining financing under the
10 Framework Agreement. Do you see that?

11 A. Yes.

12 Q. Did you understand from this message that AMCK's board and
13 shareholder were asking for more than just getting rent current
14 by the time of the next aircraft delivery?

15 A. Yes, there was an ongoing negotiation going on.

16 Q. Let me show you Joint Trial Exhibit 111. And I want to
17 focus on the e-mail at the middle of the page from you to
18 Mr. Sheridan, looks like it's dated April 27, 2020.

19 The first sentence you write, "I've just been briefed
20 by Robert." Do you see that?

21 A. Yes.

22 Q. And pardon me. Let me start that over. So you say in the
23 first sentence, "I have just been briefed by Robert and I was
24 working on the assumption that we had to be current on all rent
25 for you to finance the upcoming deliveries."

O4G3FRO3

Dempsey - Cross

1 Did I read that correctly?

2 A. You did.

3 Q. My question is, when you were briefed by Robert, did you
4 discuss the two elements described by Jane O'Callaghan in her
5 text message on April 25?

6 A. I would have, yes.

7 Q. You seem to be indicating in this e-mail that Frontier is
8 agreeable to the first of those two elements, correct?

9 A. Well, I was working on the assumption we had to be current
10 on all the rent for you to finance the upcoming delivery, yes.

11 Q. That's the first element from Jane O'Callaghan's text,
12 right?

13 A. I don't see it now, but I think it's consistent with that,
14 yes.

15 Q. Did you offer anything here to address the second element
16 in Ms. O'Callaghan's text, the additional quid pro quo?

17 A. I did not respond to that element of it.

18 Q. In the second line of this e-mail towards the end of the
19 sentence you write, "I put a scheme in place with Airbus that
20 would facilitate short-term deferrals of the aircraft on the
21 basis that you would honor your agreement. Please confirm this
22 is the case as we have a lease signed for these aircraft and
23 are willing to ensure the deferred rent is paid as a CP of
24 delivery."

25 Did I read that correctly?

O4G3FRO3

Dempsey - Cross

1 A. You did.

2 Q. Are you asking Mr. Sheridan here to confirm that Frontier
3 didn't not have to pay until the next delivery?

4 A. The waiver agreement that was put in place between Paul and
5 I required that the next aircraft delivery -- sorry -- the
6 outstanding rents would be paid at the next aircraft delivery,
7 yes.

8 Q. Well, are you saying that that had already been agreed with
9 Mr. Sheridan?

10 A. That was agreed on the April 7 call that we've discussed.

11 Q. What are you asking Mr. Sheridan to confirm here?

12 A. I am actually asking him in the prior sentence will he
13 honor his agreement. Please confirm this is the case.

14 Q. And you are talking about the Framework Agreement there?

15 A. No -- sorry, yes, yes. The Framework Agreement, yes.

16 Q. Did Mr. Sheridan provide that confirmation to you?

17 A. He did not.

18 Q. We can see at the top of the page Mr. Sheridan's response.
19 He refers to the board meeting last week and the need to follow
20 up, correct?

21 A. That's correct.

22 Q. He did not provide the confirmation you were looking for,
23 right?

24 A. He did not.

25 Q. I believe that you testified that you made an offer to

O4G3FRO3

Dempsey - Cross

1 Mr. Sheridan on April 30 to pay all outstanding rent
2 immediately. Did I hear that correctly?

3 A. Yes.

4 Q. And that offer was made on a phone call with Mr. Sheridan,
5 is that correct?

6 A. I believe so, yes.

7 Q. Was that some time in the morning, at least your time, on
8 April 30?

9 A. I assume that it was probably earlier Denver time, yeah.

10 Q. You didn't need an agreement from AMCK to pay outstanding
11 rent immediately, did you?

12 A. No, we did not.

13 Q. Frontier could have just done that unilaterally, correct?

14 A. Yes, but we were in a negotiation with AMCK at this time
15 where we were attempting to move aircraft with Airbus, and they
16 were providing us with a waiver on rent while we did that.

17 Q. So what agreement were you seeking on that telephone call?

18 A. I was seeking confirmation that he would honor his
19 agreement with us, because it was unclear at that point as to
20 whether they would actually finance the upcoming aircraft
21 deliveries.

22 Q. Let me show you what's been marked as Joint Trial
23 Exhibit 121. And I'll focus your attention on the second page
24 of this exhibit which is an e-mail from Paul Sheridan. He's
25 not sending this to you, though, he's sending to people at CK

O4G3FRO3

Dempsey - Cross

1 and AMCK, correct?

2 A. That's my understanding, yes.

3 Q. Before this lawsuit, you never saw this e-mail, right?

4 A. No, I did not.

5 Q. But this does purport to describe a response from Frontier
6 from earlier that day, correct?

7 A. Portions of it, yes.

8 Q. Well, that was my question, sir. Does this accurately
9 reflect the offer that you made to Mr. Sheridan on the morning
10 of April 30?

11 A. Portions of that. Those three points do reflect an offer I
12 made to Mr. Sheridan.

13 Q. Which portions?

14 A. We went through this earlier.

15 They understand they must be current on all payments
16 at and beyond closing. They will immediately pay outstanding
17 April rents. They will pay May, June, and July rents and all
18 beyond on time. They can get Airbus to agree to defer the next
19 three deliveries, all AMCK's, to July 2020 as part of a much
20 bigger negotiation to defer deliveries from 2020, '21 and '22
21 and they will swap our last two deliveries in September and
22 October 2020 to February 2021 with another lessor or they will
23 get Airbus to agree to push out, not 100 percent clear.

24 So, all of those were consistent with what I had said.
25 The item that I believe was communicated by Paul which is not

O4G3FRO3

Dempsey - Cross

1 said by me is we agreed an informal deferral pending agreement
2 with Airbus on delivery delays. That I believe was Paul's
3 language.

4 Q. So you didn't mention an informal deferral pending
5 agreement with Airbus in your telephone call, is that right?

6 A. I believe he's paraphrasing the waiver agreement that was
7 in place on April 7.

8 Q. You don't know what Mr. Sheridan was paraphrasing in this
9 e-mail, in this internal AMCK e-mail, do you?

10 A. No.

11 Q. Did your offer to Mr. Sheridan that morning include any
12 other elements?

13 A. I don't recall.

14 Q. Did your offer include any other quid pro quo for AMCK?

15 A. I don't recall.

16 Q. You testified earlier today that Mr. Sheridan did not
17 accept this proposal to pay all rent immediately. Did he
18 reject that on the call itself or some time later?

19 A. He didn't respond.

20 Q. He didn't respond to your offer, is that correct?

21 A. That's correct.

22 Q. Later in the day, he sent you a counteroffer, is that
23 right?

24 A. That's correct.

25 Q. So let's take a look at that. It's Joint Trial

O4G3FRO3

Dempsey - Cross

1 Exhibit 122.

2 I think we looked at this a lot during the course of
3 the case. Did you understand this to be a rejection of your
4 proposal?

5 A. It was an updated proposal from Paul or AMCK to me.

6 Q. Right.

7 A. This is a typical back and forth you get in negotiations
8 like this.

9 Q. This is a counterproposal. So he's not accepting your
10 earlier proposal and he's proposing this instead, correct?

11 A. Yeah.

12 Q. And did Frontier agree to this proposal from AMCK?

13 A. No, we did not.

14 Q. To the contrary, you e-mailed Mr. Sheridan back
15 immediately -- and we can go up to the message on April 30 --
16 calling it an overreach, correct?

17 A. Yes.

18 Q. And then you had another telephone call with Mr. Sheridan,
19 is that right?

20 A. Yes.

21 Q. What do you remember about that second telephone call with
22 Mr. Sheridan?

23 A. I recounted it earlier. We had a phone call about --
24 particularly about -- if you scroll down, please, the
25 introduction of point two, where it was the first time that

O4G3FRO3

Dempsey - Cross

1 they had introduced a date certain, other than the next
2 aircraft delivery, for Frontier to remain -- to get current and
3 remain current on rent payments. And then we discussed at
4 length the point three, which was their desire for us to
5 effectively move all of the aircraft from eight year leases to
6 12 year leases, which would have been a significant obligation
7 on behalf of Frontier, and my opinion was that that was an
8 onerous ask, given the situation that we were in at that point.
9 It was an approximately \$200 million of increased obligations
10 on the airline at a time when our debt capacity or our
11 borrowing capacity was very important to the airline in order
12 to manage the pandemic that was occurring.

13 Q. So you didn't like that request, right?

14 A. I did not.

15 Q. Were you angry with Mr. Sheridan on this call?

16 A. No, I actually explained to him that we couldn't do it.

17 Q. Was it an emotional call?

18 A. I explained to him that this was an onerous condition and
19 that we could not do it.

20 Q. Do you recall speaking with Mr. Sheridan again after this
21 second April 30 call?

22 A. I think on this call, I proposed an alternative quid pro
23 quo where we would prepay rent and try to create some balance
24 between prepaying rent on upcoming deliveries at the point of
25 delivering the aircraft, and the outstanding rent balances that

O4G3FRO3

Dempsey - Cross

1 were due to AMCK under the waiver agreement. And so, I think I
2 proposed that to him. And he said to me that he would speak to
3 the shareholder and come back.

4 Q. My question, sir, is did you speak to Mr. Sheridan again
5 after this call and before the termination that occurred on
6 May 8?

7 A. I don't believe so.

8 Q. Let me show you the termination notice that's Joint Trial
9 Exhibit 146. This is an e-mail dated May 8, 2020, copied to
10 you and attached to it. If we go to the second page of the
11 exhibit, Rishika.

12 Do you recognize this to be the termination notice
13 delivered by AMCK?

14 A. Yes.

15 Q. You testified that you were shocked when you received this
16 because I believe you said we had a waiver agreement in place.
17 Do I remember that correctly?

18 A. Yes.

19 Q. Is that a reference to the month-to-month arrangement
20 discussed on April 7?

21 A. Yes.

22 Q. After you received this notice, did you participate in
23 internal discussions at Frontier concerning how to respond?

24 A. I would have had some discussions, yes, internally, with
25 our external counsel on what we should do next given the --

O4G3FRO3

Dempsey - Cross

1 Q. Mr. Dempsey, Mr. Dempsey, I don't want you to go to any
2 privileged communications so I am going to ask you yes or no.

3 Did you participate in discussions about how to
4 respond to this after the notice was received?

5 A. Yes.

6 Q. And did those discussions involve other people at Frontier?

7 A. Yes, they would have.

8 Q. Did they involve Mr. Thwaytes?

9 A. I would assume so, yes. I don't have a clear recollection
10 of exactly who we spoke to.

11 Q. Did they involve Mr. Fanning?

12 A. I assume they would have involved them plus our counsel.

13 Q. And you indicated they did involve external counsel as
14 well. Does that include your internal counsel Mr. Howard
15 Diamond?

16 A. They would have included internal and external counsel,
17 yes, all those discussions.

18 Q. This termination notice was received on a Friday, May 8, is
19 that right?

20 A. Yes.

21 Q. And do you recall that Frontier responded to this
22 termination the next day, Saturday, May 9?

23 A. I don't recall exactly.

24 Q. Let me show you what's been marked as Joint Trial
25 Exhibit 148. And maybe we can zoom out a little bit so

O4G3FRO3

Dempsey - Cross

1 Mr. Dempsey can see a little bit more of the letter.

2 Do you recognize this as Frontier's response to the
3 termination notice?

4 A. I assume so.

5 Q. This is dated May 9 which would have been a Saturday,
6 correct?

7 A. Yes.

8 Q. And it looks like if you go to the next page at the bottom,
9 this was -- or maybe it is the next page after that -- this
10 letter was signed by Frontier's general counsel Howard Diamond,
11 correct?

12 A. Yes.

13 Q. So I don't want to get into any privileged matter,
14 Mr. Dempsey, but can you tell me yes or no, did you participate
15 in the drafting of this letter?

16 A. I did not. Not to any great extent.

17 Q. Let me show you your testimony from your deposition. At
18 page 161, line 15, I asked you:

19 "Q. So just to make sure there's no attorney-client issue, can
20 you tell me yes or no did you participate in the drafting of
21 this letter?"

22 What was your answer?

23 A. Yes.

24 Q. And Mr. Dempsey, did you review this letter before it was
25 sent?

O4G3FRO3

Dempsey - Cross

1 A. I did, yes.

2 Q. Now, without going into the contents of any of your
3 comments, did you provide comments on the draft letter to
4 Mr. Diamond? So that's a yes or no question.

5 A. I don't recall. I may well have provided comments at that
6 time, yes.

7 Q. So let's go back and look at the letter. I want to direct
8 your attention to I think the first page of the letter and the
9 third paragraph on the page. In the second line of that
10 letter, Mr. Diamond states, "AMCK clearly and unequivocally
11 temporarily waived Frontier's payment obligations under our
12 existing aircraft leases pending the outcome of our active and
13 ongoing good faith negotiations over rent deferral and deferral
14 of new upcoming aircraft deliveries."

15 Did I read that sentence correctly?

16 A. Yes.

17 Q. And then this letter goes on to provide a chronology of
18 relevant events starting with the March 16 rent deferral
19 request in the next paragraph. Do you see that?

20 A. Yes.

21 Q. At the bottom of page 1, there is a paragraph devoted to
22 Paul Sheridan's April 6 e-mail with the 10 working day grace
23 period. Do you see that?

24 A. Yes.

25 Q. And the next paragraph, which is on the next page at the

O4G3FRO3

Dempsey - Cross

1 top, it talks about subsequent discussions, and it says at the
2 end, so it's the fourth line from the bottom of this paragraph,
3 in the middle of the line, "During this time, it was made clear
4 by Mr. Sheridan's e-mails and many subsequent communications
5 between AMCK and Frontier that AMCK was not going to require
6 rent payments on the existing aircraft leases while the parties
7 worked out a global solution that addressed both the rent
8 deferral and the deferral of new upcoming aircraft deliveries."

9 Do you see that?

10 A. Yes.

11 Q. And then there is a paragraph describing the April 30
12 e-mail sent by Paul Sheridan. Do you see that?

13 A. Yes.

14 Q. Is there any description in this letter of your April 7
15 telephone conversation with Mr. Sheridan?

16 A. I don't see it specifically on this page that you're
17 showing me at the moment. Although, at the end of the
18 paragraph starting with since Mr. Sheridan's April 6 e-mail, it
19 has a sentence that says, "During this time it was made clear
20 by Mr. Sheridan's e-mails and many subsequent communications
21 between AMCK and Frontier that AMCK was not going to require
22 rent payments on the existing aircraft leases while the parties
23 worked out a global solution that addressed both rent deferral
24 and the deferral of new upcoming aircraft deliveries."

25 Q. Right, and I just read that sentence to you. Do you agree?

O4G3FRO3

Dempsey - Cross

1 A. Yes.

2 Q. And does that sentence say anything about your April 7
3 telephone call with Mr. Sheridan?

4 A. It doesn't specifically date it. But it does address the
5 contents of that call.

6 Q. Is there any mention in this letter of a month-to-month
7 agreement between yourself and Mr. Sheridan?

8 A. I do not know, I haven't read the letter in full. I have
9 no -- I'm just looking at three paragraphs.

10 Q. Let me show you Joint Trial Exhibit 150, which is AMCK's
11 response to your letter or to Frontier's letter.

12 So this is dated a few days later, May 12, 2020. Have
13 you seen this letter before?

14 A. I'm sure I have but I don't recall. I don't recall its
15 contents right now.

16 Q. Did you review this letter on or about May 12, 2020?

17 A. I would assume that I probably did.

18 Q. In the second paragraph of this letter -- this is a
19 response from Mr. Ernie Yu, the general counsel of AMCK, and I
20 could show that on the second page at the top. Do you see
21 that?

22 A. Yes.

23 Q. And going back to the first page, second paragraph, Mr. Yu
24 writes, "Your letter states that AMCK is not entitled to
25 terminate because AMCK temporarily waived Frontier's payment

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Dempsey - Cross

1 obligations under the leases. That is incorrect. The
2 discussions between the parties have not resulted in any
3 binding commitments, and AMCK has not waived any rights under
4 the Framework Agreement."

5 Here's my question. Did you understand that AMCK's
6 position was that there had been no waiver and the discussions
7 between the parties had not resulted in any binding
8 commitments?

9 A. I think it's clear in this letter that that was their
10 position after terminating our agreement with us.

11 Q. And the next paragraph of Mr. Yu's letter discusses the
12 April 6 e-mail and the 10 working day grace period. And it
13 says, at the end of that paragraph, "This is the only
14 commitment made by AMCK with respect to non-payment of rent by
15 Frontier, and that commitment obviously expired after April 21,
16 2020."

17 And again my question to you, sir, is did you
18 understand AMCK's position to be the only commitment made by
19 AMCK expired on April 21, 2020?

20 A. I could only determine, given the letter they sent on
21 May 12 that you are showing me, that that was their position.

22 Q. Now let me show you Frontier's response to this letter,
23 which is Joint Trial Exhibit 151.

24 And do you recognize this as Frontier's response on
25 the next day to the letter from Mr. Yu?

O4G3FRO3

Dempsey - Cross

1 A. Yes.

2 Q. Did you review a draft of this letter before it was sent
3 out?

4 A. I'm sure I did at the time, yes.

5 Q. Focusing on the fourth paragraph of the letter, it says, "I
6 would like to remind AMCK of the following facts that support
7 our claim that AMCK both expressly and impliedly deferred
8 Frontier's payment obligations with regard to the leased
9 aircraft." And then that language is followed by several
10 enumerated paragraphs carrying over to the next page. Do you
11 see that?

12 A. Yes.

13 Q. Turning to the next page, which Rishika's already helpfully
14 done for me, paragraph 3 discusses Mr. Sheridan's April 6
15 e-mail. Do you see that?

16 A. Yes.

17 Q. And paragraph 4 discusses Mr. Sheridan's April 30 e-mail.
18 Do you see that?

19 A. Yes.

20 Q. Is there any mention here of your April 7 telephone
21 conversation with Mr. Sheridan?

22 A. Again, the very final sentence of this paragraph mentions
23 an express deferral is given by a lessor to facilitate ongoing
24 and complex business negotiations with rent and delivery
25 deferrals. It is reasonable for the other party to temporarily

O4G3FRO3

Dempsey - Redirect

1 withhold performance while the parties are both working
2 diligently to reach a final agreement.

3 In the prior letter and in this letter we referred to
4 the fact that there were rent deferrals provided to us.

5 Q. Mr. Dempsey, is there any expresses reference in this
6 letter to an April 7 telephone call?

7 A. I do not see an April 7 date listed.

8 Q. Is there any mention of a month-to-month rent deferral
9 agreement?

10 A. I don't see that on this page.

11 MR. BUTLER: Just as a housekeeping matter, I would
12 like to move a few items into evidence. They are Joint Trial
13 Exhibit 53, 85, 150, and 151, and also Plaintiff's Exhibit 2.

14 MR. HOSENPUD: No objection.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 2 received in evidence)

17 (Joint Exhibit 53, 85, 150, 151 received in evidence)

18 MR. BUTLER: Thank you very much, Mr. Dempsey. I have
19 no further questions.

20 REDIRECT EXAMINATION

21 BY MR. HOSENPUD:

22 Q. Mr. Dempsey, just a few questions.

23 First, I'd like to pull up Exhibit 63. You've seen
24 this before. This is when the 10-day grace period was offered
25 by Mr. Sheridan or confirmed based on the phone call by

O4G3FRO3

Dempsey - Redirect

1 Mr. Sheridan.

2 Did Mr. Sheridan indicate at any time that he needed
3 shareholder approval in this communication?

4 A. He did not.

5 Q. As it relates to your April 7 phone conversation with
6 Mr. Sheridan relating to month-to-month, did he indicate to you
7 that he needed shareholder approval to grant such an extension?

8 A. He did not.

9 Q. You were asked some questions about a declaration you put
10 into evidence in connection with the motion for summary
11 judgment. And I believe Mr. Butler asked if you said anything
12 about the repayment period being linked to the delivery
13 deferrals. Do you recall that series of questions?

14 A. Yes.

15 Q. Let's turn now to paragraph 16, the one right below the one
16 that was shown to you. And it indicates that "Around this
17 time," and you're referring to the April 7 call, "my
18 understanding from speaking with Mr. Sheridan was that AMCK's
19 main position regarding when Frontier needed to pay its
20 deferred rent was that Frontier needed to be current on all
21 rent prior to the next aircraft delivery."

22 Is that what you put into the record with your sworn
23 declaration?

24 A. Yes.

25 Q. And paragraph 17 goes on to say "Frontier's negotiations

O4G3FRO3

Dempsey - Redirect

1 with both AMCK and Airbus continued past the end of April 2020
2 and into May 2020. Throughout this time, on multiple
3 occasions, AMCK confirmed its central position on deferred
4 rent. Frontier's rent remained deferred and only needed to be
5 paid back prior to the next aircraft delivery, which Frontier
6 eventually was able to move to July 2020. No later than
7 April 27, 2020, Frontier agreed to this term."

8 Do you see that?

9 A. Could you just scroll back up, please.

10 Q. Yes.

11 A. Yes.

12 Q. Now you were also asked questions about your deposition
13 testimony with respect to this same topic so let's get that up.
14 I'm turning to page 80, line 13. At line 13, you were asked
15 the following question by Mr. Butler.

16 "Q. And I think I asked you this question before, but just to
17 be clear, did you expect that month-to-month agreement with
18 Mr. Sheridan to be documented in a written agreement between
19 the parties?

20 "A. We were working towards a more formalized agreement over
21 all, and so, I mean, I took his word given that he was the
22 chief executive of the company that he had provided us with
23 that."

24 Was that your testimony at the time?

25 A. Yes.

O4G3FRO3

Dempsey - Redirect

1 Q. Now, you were asked a question, and I'm going to see if I
2 can paraphrase it correctly, that all Frontier had to do to
3 compel AMCK to show up is pay its rent. Do you recall that
4 line of questioning?

5 A. Yes.

6 Q. And I believe your response was that AMCK might not
7 necessarily be compelled to show up, even if Frontier paid its
8 rent current. Do you recall that?

9 A. Yes, we had concern as to whether they were going to honor
10 their agreement, hence we asked them multiple times.

11 Q. I am going to turn now to Exhibit 101, and I am going to
12 represent to you that this is an internal communication from
13 Ms. O'Callaghan to Paul Sheridan and she states the following:
14 "I think they would be appalled if we said no even after they
15 got completely current and than would have a devastating effect
16 on longer term relationship. Particularly if we left so late
17 that they couldn't arrange an alternative SLB financing and had
18 to fund themselves. So we would be better off telling them now
19 that we can't get SH comfortable with funding at 2019
20 contracted pricing, even if they are completely current on all
21 payments."

22 I know you don't know this statement, but is that
23 informing what you testified to here today, that even if you
24 were current, they may not show up?

25 A. Yes.

O4G3FRO3

1 Q. Let's turn now to Joint 146. And this is the notice of
2 termination, and at the end of this notice on May 8, there
3 seems to be a schedule of payments and it focuses solely on the
4 April rents. Do you see that, sir?

5 A. Yes.

6 Q. You were asked a question, did you repay the moneys on
7 March 13 with interest. Do you recall that question?

8 A. Yes.

9 Q. And I believe your answer was no, is that correct?

10 A. That's correct.

11 Q. Is there a request for any interest in this schedule?

12 A. No.

13 MR. HOSENPUD: That's all I have, sir. Thank you.

14 MR. BUTLER: No further questions, your Honor.

15 THE COURT: Anything further?

16 MR. BUTLER: Nothing further from me, your Honor.

17 THE COURT: Thank you, Mr. Dempsey. You are excused.

18 THE WITNESS: Thank you, your Honor.

19 (Witness excused)

20 MR. HOSENPUD: Excuse me, your Honor. With the
21 exception of keeping the record open for putting in the
22 excerpts of the depositions, the plaintiff rests. And we are
23 still working out with counsel, unless we've come to a
24 consensus on the excerpts that were actually played by video.
25 That's why I'd like to leave the record open to put those

O4G3FRO3

Sheridan - Direct

1 excerpts in, in their exhibit numbers.

2 THE COURT: Thank you, Mr. Hosenbud.

3 MR. BUTLER: Thank you, your Honor.

4 Defendants call Mr. Paul Sheridan.

5 PAUL SHERIDAN,

6 called as a witness by the Defendant,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BUTLER:

10 Q. Good afternoon, Mr. Sheridan.

11 A. Good afternoon.

12 Q. At the beginning of March 2020, were you working for the
13 defendant in this case, AMCK Aviation Holdings Ireland?

14 A. Yes, I was.

15 Q. What was your position at that time?

16 A. I was CEO of the company and a director also.

17 Q. So were you also on the board of AMCK?

18 A. I was on the board of AMCK and its subsidiaries, yes.

19 Q. At that point, how long had you worked in the aviation
20 industry?

21 A. Since 1999, so it makes 21 years at that point.

22 Q. If you make sure you're speaking directly into the
23 microphone, Mr. Sheridan.

24 A. Okay.

25 Q. Where were you based at that time?

O4G3FRO3

Sheridan - Direct

1 A. I was based in Dublin, in Ireland.

2 Q. And when did you leave that position?

3 A. In middle of April 2022.

4 Q. What were the circumstances of your departure?

5 A. The business was sold to funds managed by Carlyle Aviation
6 Partners, and as a result of that, the staff of AMCK Aviation
7 was made redundant, myself included. So I finished up on the
8 date of the sale.

9 Q. Are you employed today?

10 A. Yes.

11 Q. What is your job?

12 A. I head up an advisory team within PwC Ireland specializing
13 in aircraft finance and aircraft leasing.

14 Q. Is it correct to say you're still in the aircraft leasing
15 business?

16 A. Yes, yeah.

17 Q. At the beginning of March of 2020, who were the
18 shareholders of AMCK?

19 A. So, AMCK had three shareholders at that time. It was CK
20 Asset Holdings, there was -- if I get the name correct, the Li
21 Ka Shing Overseas Foundation which held 10 percent, CK Assets
22 Holdings held 50 percent, and Mitsubishi Corporation, which
23 held 40 percent.

24 Q. Was it correct at that time that CK Assets Holdings was
25 AMCK's largest shareholder?

O4G3FRO3

Sheridan - Direct

1 A. They were affiliated with Li Ka Shing Foundation and they
2 were effectively the controlling shareholder, yes.

3 Q. Who was your main contact at CK Asset Holdings?

4 A. It was Gerald Ma.

5 Q. And what role did CK play in AMCK's business?

6 A. I would characterize them as being a very active
7 shareholder. They took a lot of interest in the day-to-day
8 business. There were certain individuals within the CK team
9 that I had conversations with on at least a weekly basis, and
10 then during more stressful times, like the start of the
11 pandemic, we probably had in a lot of cases daily conversations
12 about what was happening.

13 Q. Did you consult with Gerald Ma and the CK team on
14 significant decisions at AMCK?

15 A. Yes, all the time.

16 Q. Why did you do that?

17 A. It was in essence how they liked to operate. They ran most
18 of their business in a very similar manner. They're very
19 active. They liked having very regular updates on what was
20 going on, and they liked being a part of the decision process.

21 Q. Did CK own some of the aircraft that were serviced by AMCK?

22 A. Yes, that's correct. There were aircraft owned through
23 what we called the Accipiter group of companies, which was
24 100 percent owned by CK Assets Holdings, and they were managed
25 by AMCK.

O4G3FRO3

Sheridan - Direct

1 Q. Did CK also provide capital to AMCK?

2 A. Yes, they did.

3 Q. And did CK representatives sit on AMCK's board?

4 A. Yes, there was a majority CK representatives on the AMCK
5 board.

6 Q. Could you just tell me generally, what kind of business is
7 AMCK or was AMCK at the time?

8 A. AMCK was a -- we would term it as an aircraft leasing
9 business, which in essence meant owning and managing aircraft
10 that were on long-term operating leases to airlines around the
11 world. In commercial aircraft I should say.

12 Q. And I've seen the term servicer under lease agreements.
13 What does a servicer do?

14 A. So a servicer typically will manage the contracts of the
15 operating lease, so collecting rents, making sure that the
16 obligations of the leasing company or the owner company and
17 the -- and the airline as the lessee are all fulfilled, dealing
18 with any issues that arise from them not being fulfilled, and
19 sometimes doing more on a corporate basis, like fundraising or
20 accounting.

21 Q. Was a part of AMCK's business to be a servicer under
22 aircraft leases?

23 A. It was, both for the Accipiter Group and for a small number
24 of third parties that had no direct relationship, but with
25 aircraft that the company managed on their behalf.

O4G3FRO3

Sheridan - Direct

1 Q. Another defendant in this case is Accipiter Investments
2 Aircraft 4 Limited. Are you familiar with that entity?

3 A. Yes, I am.

4 Q. What was that?

5 A. That was what we would term an aircraft owning company. So
6 it would directly generally own the aircraft that were on lease
7 to a certain number of airlines.

8 Q. Was that entity a subsidiary of CK Asset Holdings in March
9 of 2020?

10 A. Ultimately, yes, through the Accipiter Holdings company.

11 Q. And I think you mentioned that Accipiter was the beneficial
12 owner of some of the aircraft -- strike that. I don't think
13 you did say that so let me ask the question.

14 Was Accipiter the beneficial owner of some of the
15 aircraft that were on lease to Frontier?

16 A. Yes, they were. It was 14 aircraft.

17 Q. 14 aircraft. Were those the 14 aircraft that were on lease
18 before March of 2020?

19 A. Yes, that's correct.

20 Q. And do I understand correctly that therefore CK Asset
21 Holdings was the indirect owner of those 14 aircraft?

22 A. Yes, that's correct.

23 Q. The third remaining defendant in this case is Vermillion
24 Aviation (Two) Limited. Are you familiar with that entity?

25 A. Yes, I am.

O4G3FRO3

Sheridan - Direct

1 Q. In March of 2020, was that an affiliate of AMCK?

2 A. That should have been a direct subsidiary of AMCK.

3 Q. It was a direct subsidiary of AMCK?

4 A. Yes.

5 Q. And was Vermillion also the beneficial owner of an aircraft
6 leased to Frontier?

7 A. Yes, that's correct.

8 Q. Was that the aircraft that was delivered in March of 2020?

9 A. Yes, it was.

10 Q. So, of the 15 aircraft leased to Frontier, 14 were
11 beneficially owned by Accipiter, and one was beneficially owned
12 by Vermillion. Is that right?

13 A. That's right.

14 Q. And were all of those aircraft serviced by AMCK?

15 A. Yes, they were.

16 Q. Another entity that has come up in this case is Accipiter
17 Holdings DAC. What was that entity?

18 A. That was the holding entity for the Accipiter group of
19 companies, so it would have been the owner of Accipiter
20 Investments 4, if I have their name correct.

21 Q. So, it sounds like that was a subsidiary of CK Asset
22 Holdings. Is that correct?

23 A. Yes.

24 Q. Was it a parent or subsidiary of AMCK?

25 A. No, it was an affiliate.

O4G3FRO3

Sheridan - Direct

1 Q. I want to ask you about the Framework Agreement in this
2 case. And Rishika, I'm not sure we have to put this on the
3 screen, we're all pretty familiar with it.

4 In your own words, how would you describe the
5 Framework Agreement that was entered in March of 2020?

6 A. It was the agreement that governed the purchase of six
7 aircraft that were part of the Frontier Airlines order book
8 with Airbus. And so, a nominee company of AMCK would purchase
9 those aircraft and then lease them directly from Airbus and
10 then lease them to Frontier for a predefined period.

11 Q. Do you remember how much AMCK agreed to pay for each those
12 aircraft?

13 A. It was \$51 million per aircraft I think.

14 Q. We've seen in this case that the first delivery under the
15 Framework Agreement took place on March 16, 2020. Is that your
16 recollection?

17 A. Yes, that is.

18 Q. Did AMCK make a payment of \$51 million on that date?

19 A. Yes.

20 Q. Was that payment made to Frontier or to Airbus?

21 A. I believe it should have been made to Airbus.

22 Q. Did the shareholder CK provide any of the funding for that
23 \$51 million payment?

24 A. I don't recall the precise funding mechanism that was used
25 for that aircraft. But it was typical that we would use some

O4G3FRO3

Sheridan - Direct

1 combination of either the company's own money or funds drawn
2 down from the shareholders or some bank financing for any
3 aircraft purchases.

4 Q. And were the same sources of funding expected to be used
5 for the other five aircraft deliveries that were expected under
6 the Framework Agreement?

7 A. Some combination of those, yes.

8 Q. Let me show you what's been marked as Joint Trial
9 Exhibit 28, which is the March 16 deferral request from
10 Frontier. Do you recall receiving this request on March 16,
11 2020?

12 A. Yes, I do.

13 Q. And what was your understanding of what was proposed in
14 this letter?

15 A. What was being requested was to -- as a result of the COVID
16 pandemic, to defer -- for the airline to defer paying rent on
17 the aircraft that had been delivered for a period of three
18 months with the repayment of that deferred rent to take place
19 after the deferral period.

20 Q. This rent deferral request, did it cover the aircraft that
21 had just been delivered that very same day?

22 A. Yes, it did.

23 Q. And what was the time period of the rent deferral requested
24 by Frontier?

25 A. It would have been just over three months, so from the date

04G3FRO3

Sheridan - Direct

1 of the 16th of March up to the end of June of 2020.

2 Q. What was the repayment period proposed here?

3 A. The requested repayment period was nine months.

4 Q. I think this letter also indicates that Frontier was going
5 to pay interest, is that right?

6 A. That's correct, but not specified.

7 Q. In your experience, are those the typical limits of a rent
8 deferral agreement?

9 A. Yes, yeah.

10 Q. And other than unspecified interest, was Frontier offering
11 anything in return for this rent deferral?

12 A. Nothing in particular, no.

13 Q. What was the reaction at the shareholder CK Asset
14 Management to this rent deferral request from Frontier?

15 A. I think probably characterize it as being probably a bit
16 angry, based on the timing of the request, that it came in just
17 after the aircraft got delivered. And it felt that it was
18 timed to be done that way, so that the delivery could happen
19 without any issues, and then the deferral was requested.

20 It was, yeah, that's probably how I would characterize
21 it.

22 Q. Were people at CK unhappy that AMCK had just paid
23 51 million at the time during the pandemic, and on the same day
24 Frontier was asking to defer all rent payments for a period of
25 three months?

O4G3FRO3

Sheridan - Direct

1 A. Yes, they were very unhappy about that.

2 Q. Did AMCK receive other rent deferral requests from other
3 airlines around this time?

4 A. Yes.

5 Q. Did AMCK reach agreement on rent deferral with some of
6 those other airlines?

7 A. Yes.

8 Q. Did it reach agreement with all of the airlines that made
9 the request?

10 A. I don't think it was in all cases, no.

11 Q. Where AMCK did reach agreement, was the rent deferral
12 documented in a written agreement?

13 A. Yes, it was.

14 Q. Was that true for all of them where an agreement was
15 reached?

16 A. Yes, it was.

17 Q. Did each of those other rent deferral agreements, did they
18 include the elements of a deferral period, a repayment period,
19 and an interest rate?

20 A. Yes, it would have contained at least those.

21 Q. Let me show you what's been marked as Joint Trial
22 Exhibit 58. Do you recall, sir, that on April 3, 2020, you
23 made a proposal for rent deferral to Frontier?

24 A. Yes.

25 Q. Is this the e-mail in which you make that proposal?

O4G3FRO3

Sheridan - Direct

1 A. Yes, it is.

2 Q. Were there previous proposals from the AMCK side?

3 A. I don't recall having any previous proposals. I don't
4 remember.

5 Q. For this proposal, what were the terms that you were
6 offering?

7 A. We were offering the three month deferral request on 14 of
8 the 15 aircraft, so that would exclude the one that was
9 delivered on the 16th of March. But the repayment would have
10 been over a four-month period at a 6 percent interest rate, but
11 also that the remaining aircraft under the Framework Agreement
12 would not be funded for a period of six months.

13 Q. And is that the reference to suspending the SLB?

14 A. That's correct.

15 Q. Is that something that Frontier would have to negotiate
16 with Airbus?

17 A. Yes, I think they would have to negotiate with Airbus or
18 with some of the other financing providers who could have
19 potentially stepped in to take the slots that were notionally
20 allocated to us.

21 Q. Was there more than one way for Frontier to comply to this
22 request to suspend the SLB for six months?

23 A. Yes.

24 Q. What would those have been?

25 A. They would have been to negotiate with Airbus on the one

O4G3FRO3

Sheridan - Direct

1 hand, to delay the deliveries. And on the other hand, to
2 discuss with other financiers, either existing or new, to take
3 the delivery slots in that six-month period.

4 Q. So focusing on that first option, negotiation with Airbus
5 for delays. Did AMCK have any involvement in Frontier's
6 discussions with Airbus?

7 A. No. We would not have been involved in those discussions.

8 Q. Did you know at this time whether Frontier would be able to
9 negotiate a six-month delay with Airbus?

10 A. We didn't know if it was going to be possible.

11 Q. At the bottom of your e-mail you include some language that
12 begins "for the avoidance of doubt." Do you see that?

13 A. I do, yes.

14 Q. Do you include that on all your e-mails?

15 A. We would typically have included them on e-mails of this
16 nature that were proposing changes to be agreed, so that it
17 could be understood that they were raised for discussion, and
18 to separate it from anything that we were committing to.

19 Q. You are kind of getting to my next question. Let me ask
20 the first question again.

21 Did you include this language on all of your e-mails?

22 A. No.

23 Q. And I gather from your answer that you just included it in
24 proposals to make changes to lease agreements, is that right?

25 A. That's correct.

O4G3FRO3

Sheridan - Direct

1 Q. Let me show the response to this proposal. Joint Trial
2 Exhibit 61. This is an e-mail from James Dempsey dated Monday,
3 April 6, 2020. Do you recall this as Mr. Dempsey's response to
4 your April 3 proposal?

5 A. Yes.

6 Q. He begins by saying "This is very disappointing news."

7 Did the Mr. Dempsey reject your proposal?

8 A. I think in essence, yes, he did.

9 Q. Mr. Dempsey says in this e-mail, the second line beginning
10 in the middle of the page, "I can only deduce that you will
11 finance the aircraft deliveries and honor your commitment to
12 Frontier if we do not put a rent deferral in place."

13 What did you understand him to be saying here?

14 A. That we would only be financing the aircraft if rents were
15 paid in full and there were no rents deferred.

16 Q. Did Mr. Dempsey make any counterproposal to AMCK in this
17 e-mail?

18 A. No.

19 Q. Let me go to Joint Trial Exhibit 62. And I'll ask you
20 first about the e-mail in the middle of the page. That was the
21 e-mail we just looked at where he says "disappointing news."
22 Do you see that?

23 A. Yes, I do.

24 Q. It looks like later the same day, he asked for a phone call
25 ASAP. Do you see that?

O4G3FRO3

Sheridan - Direct

1 A. Yes.

2 Q. And he refers to the fact that Airbus has closed Mobile
3 until April 29. Do you see that?

4 A. Yes.

5 Q. Did you have a telephone call with Mr. Dempsey later that
6 day?

7 A. I don't recall if it was -- we had telephone calls later
8 that day, I don't think it was with Mr. Dempsey. But, we had
9 follow-up phone calls about the subject of the e-mail.

10 Q. Focusing on telephone calls later on the day on April 6.
11 Do you recall having a call with somebody at Frontier on that
12 day?

13 A. Yes.

14 Q. Who did you have a phone call with?

15 A. With Robert Fanning.

16 Q. Was anyone else on that call?

17 A. Jane O'Callaghan.

18 Q. What do you remember about that telephone call on April 6?

19 A. I remember that we agreed on that call that, because there
20 were rent payments that were due on that day, and because the
21 discussions with Airbus were going to be difficult, and take a
22 little bit of time, that we grant them a 10-day grace period
23 where we said we would not take action under the lease
24 agreements or the other agreements if there was no -- if there
25 were no rent payments during that 10 business day period.

O4G3FRO3

Sheridan - Direct

1 Q. Let me show Joint Trial Exhibit 63. Is this an e-mail from
2 you to Mr. Dempsey confirming the agreement reached on that
3 April 6 call?

4 A. Yes, it is.

5 Q. Why did you take the time to confirm that arrangement in
6 writing to Mr. Dempsey?

7 A. Firstly, it was because of the importance of it. It was my
8 practice to do that anyway, when it's something of this nature.
9 That we were effectively telling them that we weren't going to
10 take action for this time period in order to allow them a bit
11 of leeway to try to come up with some arrangement with Airbus
12 or with another financier.

13 Q. Did you want to make sure that there was a clear end point
14 to this grace period?

15 A. Yes.

16 Q. Is that why you express it in your e-mail in two different
17 ways, 10 working days and also 21 April?

18 A. Yes, that's correct.

19 Q. You say in the middle of this e-mail, let's see the first
20 line towards the end of the page, "Mindful of the time it might
21 take to reach agreement with Airbus or to make some other
22 arrangements." What were you referring to as other
23 arrangements?

24 A. That is likely to have been arrangements with any other
25 leasing companies who might have been able to take delivery of

O4G3FRO3

Sheridan - Direct

1 aircraft in that six-month period.

2 Q. Did you inform the shareholder CK about this 10 working day
3 grace period?

4 A. Yes, I did.

5 Q. Let me show you what's been marked as Joint Trial
6 Exhibit 64. And let me start with the e-mail in the middle of
7 the page, and if you go to the bottom of the page you'll see
8 this is your April 6 e-mail describing the 10 working day
9 period.

10 Then if we go up a little bit, this is an e-mail from
11 Mr. Dempsey saying, "I appreciate this. Let's catch up." And
12 then at the top it looks like you forward this exchange to
13 Mr. Gerald Ma.

14 Is that correct?

15 A. Yes, that's correct.

16 Q. And you refer to the 10 working days in this e-mail as a
17 grace period. Was that the way that you were thinking about
18 this agreement at the time?

19 A. Yes, it was.

20 Q. Why did you send this e-mail to Mr. Ma?

21 A. It would have been part of the regular updates. It was
22 also a very important concession on our part, and it was
23 something that I felt he needed to be updated on.

24 Q. Were you seeking Mr. Ma's approval of this 10 working day
25 grace period?

O4G3FRO3

Sheridan - Direct

1 A. No.

2 Q. Is that because you had already agreed to it on your call
3 with Mr. Fanning?

4 A. Yes.

5 Q. Now let's talk about the next day, April 7, 2020.

6 Did you have a telephone call with Mr. Dempsey on that
7 day?

8 A. Yes, I did.

9 Q. On that call, do you remember discussing a month-to-month
10 deferral?

11 A. Well, I don't remember the precise details of the call.

12 But from reviewing the follow-up e-mails and the summary
13 e-mails, yes, I did discuss a month-to-month deferral.

14 Q. Well, do you remember, did Mr. Dempsey propose the
15 month-to-month deferral or did you propose it?

16 A. I believe it was Mr. Dempsey.

17 Q. And what did you understand a month-to-month deferral to
18 mean?

19 A. I understood it to mean taking to the end of that month,
20 and reviewing the situation to see if it would be extended
21 beyond that month.

22 Q. Did you agree to a month-to-month deferral on that call
23 with Mr. Dempsey?

24 A. No, I did not.

25 Q. Well, what did you say in response to the proposal?

O4G3FRO3

Sheridan - Direct

1 A. I don't recall exactly what I said. I might have said
2 something along the lines of "that might work" or something
3 like that. But I don't recall the precise wording.

4 Q. If you don't recall the exact words, how can you be sure
5 that you didn't agree to the month-to-month discussion?

6 A. I would say because it's not how I would have -- not how I
7 would have done it. I would have followed up if I had agreed
8 to it. The e-mail that I sent to the shareholder afterwards
9 was a very different nature to the e-mail of the day before.
10 And that there was still uncertainty around what that deferral
11 agreement might mean as well.

12 Q. Well, did you discuss on the call with Mr. Dempsey how long
13 the month-to-month deferral would last?

14 A. I don't think so, no.

15 Q. Did you discuss on your call with Mr. Dempsey what the
16 repayment period of the -- would apply to the month-to-month
17 arrangement?

18 A. I don't believe so either.

19 Q. Did you discuss with Mr. Dempsey the interest rate that
20 would apply on deferred rent?

21 A. I don't believe so, no.

22 Q. Did you discuss with Mr. Dempsey whether a written
23 agreement would be entered to document or memorialize the
24 month-to-month agreement?

25 A. I don't recall, no.

O4G3FRO3

Sheridan - Direct

1 Q. Setting aside the words that were used on the call, I want
2 to focus on your state of mind during that call.

3 Did you intend to agree to anything on that call with
4 Mr. Dempsey?

5 A. No, I did not.

6 Q. Did you intend to waive any rights to payment on that call?

7 A. No.

8 Q. Was it your expectation that anything that you might have
9 agreed with Mr. Dempsey would be further negotiated and
10 committed to a written agreement?

11 A. Yes, it is.

12 Q. So you mentioned that you followed up on this
13 month-to-month idea with Gerald Ma and the shareholder at CK,
14 is that correct?

15 A. Yes, that's correct.

16 Q. So let me show you Joint Trial Exhibit 76. This is an
17 April 8 e-mail that you sent to Gerald Ma, cc to Francis Lee
18 and Lillian Kiang. Do you see that?

19 A. Yes, I do.

20 Q. It looks like you're giving a quick update on the situation
21 with Frontier. And then in the second paragraph, in the first
22 paragraph you say at the end of the first line, "I spoke with
23 the CFO again yesterday."

24 Is that a reference to your telephone call with
25 Mr. Dempsey?

O4G3FRO3

Sheridan - Direct

1 A. Yes, it would be.

2 Q. And at the very end of the third line, it says, "I said
3 that I wouldn't tell him at this stage what we would do if that
4 didn't happen --"

5 Pardon me. I think I need to read the previous
6 sentence. Let me read it completely.

7 It says, "I spoke with the CFO again yesterday to
8 reiterate that our aim at this stage is to find a way to work
9 with them to get the deliveries deferred, and that since
10 between us, Frontier and Airbus, one of the three has to take
11 the hit. Our aim was to make sure that it would be Airbus. I
12 said that I wouldn't tell him at this stage what we would do if
13 that didn't happen, because I think that it would require a
14 board approval for us to walk away."

15 Was that message conveyed on your call with
16 Mr. Dempsey?

17 A. I don't recall exactly how it was conveyed, but given it's
18 in the summary here, I would imagine it was, yes.

19 Q. What did you mean when you said you thought it would
20 require a board approval for us to walk away?

21 A. At the time there was discussion about all the scenarios
22 because of the extremity of the situation with the pandemic,
23 that there was a possibility of us just not financing the
24 aircraft no matter what circumstances that was discussed.
25 Obviously something of that magnitude would require a board

O4G3FRO3

Sheridan - Direct

1 professional. There is no -- there was no way I was going to
2 unilaterally make a decision like that. It's of the magnitude
3 that would have required a board approval.

4 Q. In the second paragraph of this e-mail, towards the end of
5 the first line, you refer to Indigo Partners and you say,
6 "Indigo Partners hasn't entered the conversation yet. But he
7 expects this to happen soon."

8 What did you mean by that?

9 A. That Indigo Partners was the controlling shareholder of
10 Frontier Airlines at the time. And as the shareholder of
11 Frontier, plus a number of quite successful airlines as a group
12 would have had some significant influence we believed within
13 Airbus. So that if it was possible they could have -- they
14 could potentially have helped with the deferral discussions.

15 Q. The next sentence you write, "In the meantime, he asked for
16 us to do the deferral on a month by month basis (they are all
17 conscious that they don't want to be in default with us.)"

18 Does that reflect the fact that Mr. Dempsey proposed
19 the month-to-month idea?

20 A. Yes, it does.

21 Q. Then you say to Mr. Ma, "Since the next delivery isn't
22 going to be in April now that the Mobile plant is shut, I think
23 we can agree to this and give them a bit more time to work with
24 Airbus."

25 Did you write that to Mr. Ma?

O4G3FRO3

Sheridan - Direct

1 A. Yes, I did.

2 Q. Why did you tell Mr. Ma I think we can agree to this?

3 A. Because I wanted to get their opinion. I wanted -- I was
4 proposing the idea to them that we could agree to it. And I
5 wanted to make sure that they agreed also.

6 Q. So, is it the case you were looking for some approval from
7 your shareholder CK for this month-to-month idea?

8 A. Yes.

9 Q. And in your request for approval or your statement that you
10 can agree, are you describing a deferral to the end of April?

11 A. Yes, I am.

12 Q. Did Mr. Ma give his approval for the month-to-month
13 deferral?

14 A. Yes, he did.

15 Q. And let me show you what's been marked as Joint Trial
16 Exhibit 77. And it looks like if we scroll down or we go to
17 the second page, actually to the top, I think we are going to
18 see your report to Gerald Ma. You see the April 8 e-mail where
19 you say "A quick update on the situation with Frontier"?

20 A. Yes, I do.

21 Q. Then just above that there is an e-mail from Gerald Ma who
22 asks is it 6 percent interest, and it looks like at the very
23 top you respond at 6 percent, yes. Do you see that?

24 A. I do.

25 Q. Going to the first page of this exhibit, there is some more

O4G3FRO3

Sheridan - Direct

1 e-mail traffic on the CK side, so let's go to the bottom of
2 this page to see the next e-mail. I see there is an e-mail
3 from Gerald Ma dated April 9. And he says "Personally, I think
4 as long as we don't have to take delivery this month, giving
5 them one month deferral seems okay."

6 Do you see that?

7 A. I do.

8 Q. Did you understand that Gerald Ma was agreeable to the idea
9 of a one-month rent deferral?

10 A. Yes, I do.

11 Q. And he then says at the bottom of e-mail, "Francis and
12 Lillian?"

13 A. Yes.

14 Q. Above that is a response from Francis Lee. And he
15 expresses the view that he think it's also okay to accept their
16 month-to-month deferral at 6 percent interest. Correct?

17 A. That's correct.

18 Q. And then Lillian Kiang chimes in, in the e-mail just above,
19 and she says she agrees if no delivery in April, we can agree
20 to a one-month deferral. Do you see that?

21 A. Yes, I do.

22 Q. And you're copied on all of these e-mails, correct?

23 A. That's correct.

24 Q. Did you understand that CK was agreeable to this idea as
25 long as it's limited to a one-month deferral for the month of

O4G3FRO3

Sheridan - Direct

1 April, at 6 percent interest?

2 A. Yes, I do.

3 Q. And was that communicated to Frontier in some form?

4 A. Yes, it was. Jane O'Callaghan sent a draft deferral
5 agreement that deferred the rents for the month of April.

6 Q. Let me show you Joint Trial Exhibit 79. This is an e-mail
7 from Jane O'Callaghan to Robert Fanning, Sharath Sashikumar,
8 and Spencer Thwaytes dated April 9, 2020. Is this the e-mail
9 in which Jane O'Callaghan attaches a draft agreement
10 implementing the month-to-month deferral?

11 A. Yes.

12 Q. And let me just show you the letter itself, so the next
13 page, if you go down to the bottom of the first page of this
14 letter, there is a Section 2.1, and do you see that this
15 forbearance that's proposed here is just for the payment due in
16 April 2020?

17 A. Yes, I do.

18 Q. Do you remember the repayment period that was proposed at
19 this time?

20 A. I don't recall exactly. I think it was three months.

21 Q. Let's refresh your memory. The next page has that in the
22 draft, towards the top of the page, Section 2.1.2. It looks
23 like the repayment is on or before July of 2020. Do you see
24 that?

25 A. I do, yes.

O4G3FRO3

Sheridan - Direct

1 Q. Is there a three-month repayment period?

2 A. Yes.

3 Q. I see at the top of the page there is an interest rate of
4 6 percent. Was that also part of AMCK's proposal at this time?

5 A. Yes, that's correct.

6 Q. To the best of your knowledge, did Frontier ever respond to
7 this draft agreement?

8 A. No, they didn't.

9 Q. Did anyone from Frontier even mention it to you after it
10 was sent?

11 A. No, I don't think so.

12 Q. Okay. Let me ask you about Joint Trial Exhibit 78 which
13 has been shown to at least one other witness in this case.

14 This is an April 9 e-mail from you to Gerald Ma where
15 it looks like you've drafted an e-mail to send to Bill Franke.
16 First, who was Bill Franke?

17 A. Bill Franke was the -- I don't know the precise title, but
18 controlling shareholder or in charge of Indigo Partners. And
19 so as a result, I think he was also director of Frontier, and
20 effectively controlling shareholder of the group.

21 (Continued on next page)

22

23

24

25

O4GBFRO4

Sheridan - Direct

1 BY MR. BUTLER:

2 Q. So what was going on here?

3 A. The intention behind this was to solicit partner support
4 for the delivery deferrals from Airbus, and also that Gerald Ma
5 and Bill Franke had built up a relationship over the years so
6 it was trying to build bridges when the CK Assets Holding
7 shareholder and Indigo Partners Airline shareholder.

8 Q. And what were you trying to get Indigo Partners to do?

9 A. The principle aim is in that second last sentence to add
10 the pressure on Airbus to defer the deliveries, to see if there
11 was a way -- any way we could get those delivery deferrals in
12 place.

13 Q. And was there -- well, let me show you Joint Trial Exhibit
14 80, which is an email dated April 10 from Gerald Ma to
15 Mr. Franke. Do you recognize this as the email that was
16 actually sent to Mr. Franke?

17 A. Yes, I do.

18 Q. So the previous email was a draft. This is the real email,
19 right?

20 A. Yes, that's correct.

21 Q. Do you know whether Mr. Franke ever responded to this
22 overture?

23 A. I don't think he did, no.

24 Q. Let me show you Joint Trial Exhibit 107 which is a text
25 from Mr. Dempsey on April 11, 2020. It looks like this text

O4GBFRO4

Sheridan - Direct

1 was sent on a Saturday because he says, Sorry to bug you on a
2 Saturday. Do you recall receiving this on Saturday, April 11?

3 A. Yes, I do.

4 Q. And it looks like he wants to know from you whether a
5 two-month delay in deliveries from Airbus would work. Is that
6 right?

7 A. Yes, that's correct.

8 Q. And now let me show you Joint Trial Exhibit 84. I want to
9 focus your attention on the email, the second email on the
10 page.

11 So it looks like on April 13 you sent an email to
12 Mr. Ma in which you cut and paste the text from Mr. Dempsey; is
13 that right?

14 A. Yes, that's correct.

15 Q. And you call that a short note from Frontier, right?

16 A. Yes.

17 Q. And were you trying to get Mr. Ma's reaction to this
18 two-month delay proposal from Frontier?

19 A. Yes, I was.

20 Q. Now, if we scroll up on the page or scooch the page down.
21 Mr. Ma reacts. He says, "Here is my first reaction.
22 Essentially, we cannot support delivery if our partner is not
23 current with us." What did you understand that to mean?

24 A. I understand that to mean that all rents had to be paid in
25 full before a delivery could happen.

O4GBFRO4

Sheridan - Direct

1 Q. And was that the message that your shareholder CK was
2 consistently delivering to you?

3 A. Yes, at this time it was, yeah.

4 Q. So was it your job at the time to try to figure out how to
5 reach agreement with Frontier in a way that would satisfy that
6 parameter?

7 A. Yes.

8 Q. Let me show you Joint Trial Exhibit 85 which is an email
9 from the same date April 13 that you sent to Mr. Dempsey.

10 First let me focus your attention on the email in the
11 middle of the page from Mr. Dempsey. It looks like he followed
12 up with you on Monday April 13 about his Saturday text. Do you
13 see that?

14 A. I do, yes.

15 Q. And then your response is up above, and you apologize for
16 the slow response. You say you were waiting for some feedback
17 from the shareholders, correct?

18 A. Yes, that's correct.

19 Q. And you go onto say "Essentially, we want to tie the
20 deliveries to having no outstanding deferrals, so it would only
21 work if we recast the deferral agreement." What did you mean
22 by that?

23 A. I think what I meant by that is that if the deferral
24 agreement that we sent had a three-month repayment period, that
25 it wouldn't work with a two-month delay on delivery because

O4GBFRO4

Sheridan - Direct

1 there would be no -- because there would be outstanding
2 deferrals at the time of the delivery.

3 Q. So in Mr. Dempsey's email from that day he's really only
4 talking about the two-month delivery delay. It sounds like you
5 wanted to connect that back to the deferral request. Is that
6 right?

7 A. Sorry, could you repeat that question.

8 Q. Let me withdraw the question. That's a bad question.

9 Let me show you another email exchange from the late
10 April time period, or going into the late April time period.
11 I'd like to show you Joint Trial Exhibit 101. This is an email
12 exchange between yourself and Jane O'Callaghan on April 22,
13 2020. Do you recall that there was an AMCK board meeting on
14 that date?

15 A. Yes, I do.

16 Q. And do you remember that the Frontier situation was
17 discussed during that board meeting?

18 A. Yes, I do.

19 Q. Was any decision reached on what to do on the AMCK side?

20 A. No, there wasn't.

21 Q. I'd like to direct your attention to your email that's
22 about a third of the way down the page, or maybe even a bit
23 further, two thirds of the way down the page. You say, "One
24 thing that was clear was that the directors didn't want to
25 answer the question of what happens if Frontier gets current on

O4GBFRO4

Sheridan - Direct

1 all rents and we come up to a delivery. I think they are happy
2 to kick that one into next month." What did you mean by that?

3 A. I think I would have meant that the board meeting itself
4 was the regular quarters board meeting, so it wasn't specific
5 to the topic of Frontier, but it was obviously discussed. And
6 that there was no direction or decision made on anything
7 related to Frontier, but specifically whether that idea of
8 potentially walking away was not discussed in any -- there was
9 no direction given on that option.

10 Q. There was no direction from the board on that hypothetical
11 scenario; is that right?

12 A. That's correct.

13 Q. So let's take a look at Ms. O'Callaghan's response, so it's
14 just above that. And she says, I think it's one or the other.
15 Do you understand what she's saying there?

16 A. It may have been in relation to the request for repricing
17 the five aircraft as well as looking for the quid pro quo on
18 the 12, but I'm not certain.

19 Q. It doesn't refer to the sentence we were just talking
20 about; is that right?

21 A. I don't know.

22 Q. She goes on to say "I think they would be appalled if we
23 said no even after they got completely current, and that would
24 have a devastating effect on longer-term relationship." What
25 did you understand Ms. O'Callaghan to be saying here?

O4GBFRO4

Sheridan - Direct

1 A. That if we did ever exercise -- if we did ever walk away
2 from the deliveries, that it would just be an extremely serious
3 event.

4 Q. Was that just walking away from deliveries, or did it
5 mean -- was she talking about walking away from deliveries if
6 they were fully current on rent?

7 A. If they were fully current on rent.

8 Q. Is that a hypothetical scenario at this point in time?

9 A. It was, yes.

10 Q. Was Frontier current on its rent as of April 22, 2020?

11 A. No, it wasn't.

12 Q. Is that because of the ten-day grace period had expired the
13 preceding day on April 21?

14 A. That's correct.

15 Q. Ms. O'Callaghan goes on to say in this same paragraph "So
16 we would be better off telling them now that we can't get SH
17 comfortable with funding at 2019/contracted pricing even if
18 they are completely current on all payments." Do you see that?

19 A. I do, yes.

20 Q. What did you understand Ms. O'Callaghan to be saying here?

21 A. I think she wanted to -- if it was likely that we were
22 going to walk away, that she would want to try to tell the
23 airline in advance.

24 Q. Did you agree with that comment?

25 A. I don't think I did, no.

O4GBFRO4

Sheridan - Direct

1 Q. Why not?

2 A. Because there was no decision taken. It would have created
3 unnecessary stress to the discussions that were already
4 stressful enough.

5 Q. Let me ask you about another document. It's Joint Trial
6 Exhibit 111. I believe this is an exchange of emails with
7 Mr. Dempsey on April 27, and I want to focus on the email in
8 the middle of the page.

9 In the second line of this email towards the end
10 Mr. Dempsey writes "I put a scheme in place with Airbus that
11 would facilitate short-term deferrals of the aircraft on the
12 basis that you would honor your agreement. Please confirm this
13 is the case as we have a lease signed for these aircraft and
14 are willing to ensure the deferred rent is paid as a CP of
15 delivery." Do you see that?

16 A. I do, yes.

17 Q. When Mr. Dempsey refers to a lease signed for these
18 aircraft, what is he referring to?

19 A. I would guess it's the Framework Agreement that would have
20 been a form of the lease agreement in there that would have
21 been created on the delivery.

22 Q. And Mr. Dempsey asked you for confirmation or please
23 confirm. What did you understand Mr. Dempsey to be asking you
24 to confirm?

25 A. That we were okay with allowing the two-month deferral of

O4GBFRO4

Sheridan - Direct

1 the rents and to confirm also that we were okay to have the
2 rent paid as a condition present for delivery.

3 Q. And were you okay with those terms?

4 A. No.

5 Q. So did you provide the confirmation that Mr. Dempsey asked
6 for?

7 A. No, I didn't.

8 Q. At this point in time April 27, did you know when the next
9 aircraft delivery would be from Airbus?

10 A. We had an estimated date, but we had no certainty of when
11 it would happen.

12 Q. And is that because Frontier was still negotiating with
13 Airbus at this point?

14 A. I would say that, plus the delays that would have happen
15 because of the pandemic related shutdown of the plant would
16 have probably made it uncertain also.

17 Q. At this point was it still uncertain how long the Mobile
18 facility would be closed?

19 MR. HOSENPUD: Objection, leading.

20 THE COURT: Sustained as to form. You can lead a
21 little bit from time to time and get away with it. That's
22 okay.

23 MR. BUTLER: Understood, your Honor. I'll try to do
24 better.

25 Q. Mr. Sheridan --

O4GBFRO4

Sheridan - Direct

1 THE COURT: It adds stress to a situation where
2 there's enough stress already.

3 MR. BUTLER: I understand, your Honor. Thank you.

4 Q. Let me show you what's been marked as Joint Trial Exhibit
5 121. I want to direct your attention to the second page of
6 this exhibit, an email in the middle of the page where you
7 appear to be describing a proposal from Frontier on that day;
8 is that correct?

9 A. Yes, that's correct.

10 Q. In the first line item one it says, towards the end of that
11 line. They will immediately pay outstanding April rents on
12 which we agreed an informal deferral pending agreement with
13 Airbus on delivery delays.

14 Do you see that language?

15 A. Yes, I do.

16 Q. What did you mean by an informal deferral pending agreement
17 with Airbus on delivery delays?

18 A. I would have meant the grace period that we granted that
19 expired on the 21st of April.

20 Q. In item two, item two of this proposal is that they can get
21 Airbus to agree to defer the next deliveries, all AMCKs, to
22 July 2020, as part of a much bigger negotiation to defer
23 deliveries from 2020, '21 and '22. Do you see that?

24 A. Yes, I do.

25 Q. Was that the delivery delay that you were seeking from

O4GBFRO4 Sheridan - Direct

1 Frontier?

2 A. It wasn't, no.

3 Q. At the top of the page it looks like you forward this email
4 to -- well, this email you're sending to Gerald Ma and to
5 others at the CK team; is that correct?

6 A. Yes.

7 Q. And at the top of the page is Mr. Ma's response, correct?

8 A. Yes.

9 Q. And he has a number of comments. He also says in the,
10 looks like fourth paragraph to the end in all capitals, Is this
11 the best we can do. Do you see that?

12 A. I do, yes.

13 Q. Is it fair to say that Mr. Ma was asking you for more in
14 the way of concessions from Frontier?

15 A. Yes, it is fair.

16 Q. And did you understand that -- what additional concessions
17 did Mr. Ma want at this time?

18 A. I think he was looking for some way of ensuring that
19 deferral request or nonpayment of rents wouldn't happen again
20 after the deliveries that were happening in July of that year
21 or even out to 2021.

22 Q. Let me show you Joint Trial Exhibit 120. This is an April
23 30 email. We've seen this many times in the case which has
24 your proposal to Mr. Dempsey.

25 Do you see that?

O4GBFRO4

Sheridan - Direct

1 A. Yes, I do.

2 Q. Was this a new proposal that you made based on your
3 discussions with CK?

4 A. Yes, it was.

5 Q. And we don't need to go through all the terms of this
6 proposal. You propose a lease extension scheme in this email;
7 is that right?

8 A. That's correct.

9 Q. And what was the purpose of that element of your proposal?

10 A. It was a conditional change to the -- it would have been a
11 conditional change to the lease agreements on the aircraft that
12 would only stay in effect if there were any payment-related
13 defaults out to that date of the 15th of May 2021.

14 Q. And what would that accomplish?

15 A. It would incentivize Frontier to pay on time all the time
16 if there were any difficulties. So that if there was a
17 shortage of cash to go around, for example, that we would get
18 priority.

19 Q. Did Mr. Dempsey accept this proposal?

20 A. No, he did not.

21 Q. Do you recall having a telephone call with him later that
22 day, April 30, 2020?

23 A. I do, yes.

24 Q. What do you remember about that call?

25 A. It was a very difficult call. I think the proposal was

O4GBFRO4 Sheridan - Direct

1 rejected in no uncertain terms.

2 Q. Do you remember speaking to Mr. Dempsey again after that
3 telephone call?

4 A. Not exactly, no.

5 Q. Do you recall that there was a board meeting on May 8th
6 2020, to discuss the possibility of terminating the Framework
7 Agreement?

8 A. Yes, I do.

9 Q. Let me show you Joint Trial Exhibit 145. Were these the
10 minutes of that board meeting?

11 A. Yes, they were.

12 Q. Were you the chair of that meeting?

13 A. I was.

14 Q. Was the termination of the Framework Agreement approved at
15 this meeting?

16 A. It was.

17 Q. I want to direct your attention to page four of these
18 minutes. It looks like section 4.5 towards the bottom.

19 There's something here about approval of the Frontier
20 recommended plan. Do you see that?

21 A. I do, yes.

22 Q. Was that the plan to terminate the Framework Agreement?

23 A. Yes, it was.

24 Q. Was that plan recommended by AMCK's management?

25 A. Yes, it was.

O4GBFRO4

Sheridan - Direct

1 Q. When did AMCK's management decide to make that
2 recommendation to the board?

3 A. It would have been sometime in the few days leading up to
4 this board meeting.

5 Q. Was it after your telephone conversation with Mr. Dempsey
6 on April 30th?

7 A. Yes.

8 Q. Let me show you Joint Trial Exhibit 42, which are some text
9 between yourself and Gerald Ma. I want to direct your
10 attention to page 10 of this exhibit just to show you that this
11 is the start of text with Mr. Ma on the 8th of May 2020.

12 Do you see that?

13 A. Yes, I do.

14 Q. And that's the day that the AMCK board authorized
15 termination of the Framework Agreement. Do you agree?

16 A. Yes.

17 Q. In these text with Mr. Ma were you talking about that
18 decision?

19 A. Yes.

20 Q. I want to direct your attention to a couple of pages later,
21 page 12 of the exhibit. And there are some text from Gerald Ma
22 at the bottom.

23 He writes, "Remember Frontier is the one who has money
24 and decided not to pay us and gave us the right to follow the
25 spirit of the contract. We did not do anything wrong. We

O4GBFRO4

Sheridan - Direct

1 cannot take new deliveries from somebody who is not paying us
2 and has no regard to our own ability to survive." Did Mr. Ma
3 send you those messages?

4 A. Yes, he did.

5 Q. And you respond on the next page it seems and it looks like
6 you write. I don't feel bad about it, just want to get it done
7 before they complicate anything. Did you send those text to
8 Mr. Ma?

9 A. Yes, I did.

10 Q. What did you mean by that?

11 A. What I meant by that, that we had made the decision, myself
12 included, to recommend the termination of the Framework
13 Agreement. It was a very difficult decision, but it was one
14 that I felt comfortable with because of the circumstances. And
15 that once we had set our minds to it, we wanted to make sure it
16 got done.

17 The reference to complicate anything would have been
18 to pay rents and to become current and cure the defaults.

19 Q. Well, at this time were you actually concerned that
20 Frontier might pay the rent that was due?

21 A. I guess I would probably describe it as mixed emotions if
22 they had, concerned because we had a plan. But if they paid
23 the rent, then we at least got paid our rent.

24 Q. If Frontier had paid the rent prior to termination, would
25 you have been able to proceed with your plan?

O4GBFRO4

Sheridan - Direct

1 A. No.

2 Q. Let me show you Joint Trial Exhibit 146 which is the May
3 8th termination notice. The last document I have for you
4 today, Mr. Sheridan.

5 Let's go to the second page of this exhibit which is
6 the first page of the notice. Is this the termination notice
7 that was sent to Frontier on May 8th?

8 A. Yes.

9 Q. Looking at the second page toward the bottom I believe. Is
10 that your signature?

11 A. Yes, it is.

12 Q. Does this termination notice set forth AMCK's understanding
13 of the contractual basis for termination?

14 A. Yes, it does.

15 Q. And there's a schedule 1 attached to this notice. What
16 does this schedule show?

17 A. This I believe shows the outstanding rents from the month
18 of April that were outstanding at the time that the notice was
19 sent.

20 Q. At this point in time had Frontier also missed some
21 payments that were due in May?

22 A. I believe they would have done, yes, if there would have
23 been rent due on the 3rd of May for example.

24 Q. Can you see that because the rents are due on the same day
25 each month, correct?

O4GBFRO4

Sheridan - Cross

1 A. Yes, correct.

2 MR. BUTLER: Thank you very much, Mr. Sheridan. I
3 have no further questions.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Hosenpud.

6 MR. HOSENPUD: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. HOSENPUD:

9 Q. Good afternoon, Mr. Sheridan.

10 A. Good afternoon.

11 Q. You held your role of Accipiter Holdings as CEO from
12 approximately 2017, correct?

13 A. Correct.

14 Q. And then you became at CEO of AMCK Aviation and held that
15 position until approximately 2022; is that right?

16 A. That's correct.

17 Q. And in your role as CEO, you've guided the direction of the
18 company, dealt with the shareholders, and served as a director
19 and chairman of AMCK; isn't that correct?

20 A. Correct, except that chairman wasn't formal title. It
21 didn't have any particular governance attached to it, so it was
22 really for convenience at board meetings depending on who was
23 available.

24 Q. You typically chaired the board meetings though, didn't
25 you?

O4GBFRO4

Sheridan - Cross

1 A. No. Only as it relates. Typically if there was a
2 particular director called Robert Finnegan was available, he
3 chaired. So it was usually only on the times that he was
4 unavailable that I chaired.

5 Q. And in connection with the sale of AMCK to Carlyle, you
6 would receive a severance agreement, correct?

7 A. That's correct.

8 Q. Part of the terms of that agreement required you to
9 cooperate in this action that we're sitting here in court
10 about, correct?

11 A. I don't recall whether it was mention specifically, but
12 there was a requirement to cooperate for a particular period of
13 time after the termination agreement.

14 Q. And Ms. O'Callaghan also had a similar term in her
15 severance agreement, didn't she?

16 A. I would imagine so. It was written by some fairly standard
17 wording.

18 Q. Isn't it true that in 2020, AMCK only had Frontier Airlines
19 and Volaris for whom it had obligations to purchase aircraft?

20 A. Yes, that's correct.

21 Q. And isn't it also true that Frontier defaulted both --
22 pardon me. Isn't it true that AMCK defaulted both Frontier and
23 Volaris in connection with their Framework Agreements?

24 A. Yes, that's correct.

25 Q. Let's turn to Exhibit 30. No, strike that.

O4GBFRO4

Sheridan - Cross

1 Isn't it true that for funding of the second aircraft
2 and third aircraft under the Framework Agreement shareholder
3 funding was being considered?

4 A. I think that's correct, yes.

5 Q. And 6 million was to come from AMCK's cash balance,
6 correct?

7 A. I don't recall the details of how the money was going to be
8 made up.

9 Q. All right. Let's take a look at exhibit 44, please. Could
10 you scroll down. Were you aware of the combination of how it
11 was to be funded for these upcoming aircraft?

12 A. I was aware of the plans at the time, yes.

13 Q. Isn't it correct that you were thinking about the concept
14 of prepaid rent for the April and May deliveries of a Frontier
15 aircraft?

16 A. Yes.

17 Q. And isn't it also true that you were communicating with
18 Mr. Francis Lee of CK Assets as of March 24 about withholding
19 rent from the purchase price in the form of prepaid rent?

20 A. Again, I don't recall exactly who I would have discussed it
21 with. I remember having discussions about the possibility of
22 prepaid rent being part of --

23 Q. Let's look at Joint 46, please. I will represent to you
24 that these are text messages that were produced by AMCK. And
25 this is Francis Lee's communications with you?

O4GBFRO4

Sheridan - Cross

1 A. Yes.

2 Q. Take a look at that, and then I'll ask you some questions,
3 sir.

4 A. Okay.

5 Q. Now, in this text Mr. Lee is conveying to you that he had
6 another chat with Gerald after the call, and Gerald would think
7 that if we can negotiate to withhold about 24-months rent from
8 the money to give to Frontier, we may convince our board not to
9 stop taking the first delivery. Then he runs through the math.
10 Is that right?

11 A. Yes, that's correct.

12 Q. So already at this time in March AMCK and CK Assets were
13 considering a withhold of 24-months rent from the first
14 delivery that would be about \$6 million, wouldn't it?

15 A. Probably a little bit more. It was something we were
16 considering negotiating, yes.

17 Q. And Frontier on March 24, 2020, was completely current in
18 its rent payments to AMCK, wasn't it?

19 A. Yes.

20 Q. And you had conferred with Gerald Ma, isn't it correct,
21 that you and Francis Lee had a solution or a potential solution
22 to the taking of the next aircraft in and around this time?

23 A. Again, you have to remind me if that was -- it's very
24 likely I would have conferred with Gerald Ma on that topic,
25 yes.

O4GBFRO4

Sheridan - Cross

1 Q. Let's look at Joint Exhibit 42 just so we can close that
2 loop. You state on March 24, 2020, to Mr. Ma, Francis and I
3 have a suggestion to solve short-term delivery issue. Hope it
4 works. He will give you a call. You see that reference?

5 A. Yes, but I think that would have been from Gerald Ma to me
6 if I'm reading that correctly.

7 Q. I think that is correct. But was that communicated to you
8 then that prepaid rent would be a solution to your next
9 delivery?

10 A. Yes.

11 Q. And you indicated that you want to talk to Jane and Ernie
12 on a call tomorrow. And Mr. Ma says, like to see the MAC
13 clause. That's the material adverse change clause; is that
14 right?

15 A. I would imagine, yes.

16 Q. And to see the MAC clause suggest that Mr. Ma was looking
17 for a way not to perform the Framework Agreement; isn't that
18 so?

19 A. Well, I think, again, since we were at the very beginning
20 of the pandemic lockdown, it was just also understanding
21 whether it was in the documents and whether it was something
22 that could actually be used.

23 Q. To terminate the Framework Agreement?

24 A. Yes.

25 Q. Turning back to exhibit 44, please. Mr. Kelleher, he's the

O4GBFRO4

Sheridan - Cross

1 CFO of AMCK, correct?

2 A. Yes.

3 Q. This is where we talk about rents in advance of deduction
4 from purchase price. And he said, We may be able to get
5 through this delivery if we achieve that. Do you see that?

6 A. Yes. I would say it was probably broader than just the
7 potential for rents in advance because we were looking at quite
8 extreme circumstances given the start of the pandemic about the
9 potential for more rent deferrals or nonpayment from other
10 airlines and what that would do to the company's cash position
11 over the 12-month period.

12 Q. But this he's focusing on Frontier for the next two
13 deliveries, correct?

14 A. Yes.

15 Q. Because those deliveries were originally scheduled to
16 happen in March 2020, weren't they?

17 A. I believe so, yes.

18 Q. And then he goes on to say after that we would have a
19 little time to see how everything develops before having to
20 take the nuclear option. Did I read that accurately?

21 A. Yes.

22 Q. And the nuclear option you understood was terminating the
23 Framework Agreement, correct?

24 A. Yes.

25 Q. And then he goes onto say, Delivery delays would also help.

O4GBFRO4

Sheridan - Cross

1 Is that right?

2 A. Yes.

3 Q. And as throughout March of 2020, Frontier Airlines remain
4 current on all of its lease payments, didn't it?

5 A. Yes.

6 Q. Let's go back to 42, please. These are Gerald Ma's text
7 messages to you. And on the 25th of March he is communicating
8 that he would like to see 12-months from Frontier for the
9 delivery, meaning prepaid rent, correct?

10 A. Yes.

11 Q. And he said it cannot be something normal or we'll lose
12 credibility if they ask for a second deferral for the 15; is
13 that right?

14 A. That's correct.

15 Q. In early April you proposed to Ms. O'Callaghan to let
16 Robert Fanning know that rent deferrals were off the table if
17 Frontier took deliveries; isn't that correct?

18 A. I don't recall precisely that.

19 Q. Do you recall your deposition was taken in this case, sir?

20 A. Yes, I do.

21 Q. And let's put up Joint 54 first.

22 This is an April 1, 2020 exchange between you and
23 Ms. O'Callaghan. Do you see that at the top, sir?

24 A. Yes, I do.

25 Q. In it you -- I'm focusing you now on that second sentence.

O4GBFRO4

Sheridan - Cross

1 We will need to force them on this one though as you say. If
2 you let Robert know that three months deferral is off the table
3 if they are taking deliveries, do you think this will set
4 things in motion. You see that reference?

5 A. Yes.

6 Q. Your intention was to move things along with a notion of
7 deferring deliveries, correct? That's what you wanted to set
8 in motion, delivery deferral?

9 A. I think I was asking Jane her opinion. If you excuse me
10 for one second, can you lower the email.

11 So, yes, I would imagine I was asking Jane's opinion
12 about whether that would force the issue of it more about the
13 delivery deferrals.

14 Q. And in connection with delivery deferrals, that would
15 involve discussions between Frontier and Airbus, correct?

16 A. Yes.

17 Q. And that would take time as you knew from even April 1,
18 2020, correct?

19 A. Correct.

20 Q. And not taking deliveries was also the shareholders'
21 position in April 2 of 2020, correct?

22 A. I think if you're referring to the text message, yeah, we
23 believe that it was in our interest as well as Frontier's
24 interest to defer the deliveries.

25 Q. Did you know if Frontier believed it was in its interest

O4GBFRO4

Sheridan - Cross

1 not to take delivery?

2 A. I didn't know, but I believed it at the time, yeah.

3 Q. You didn't know how much time it would take for Frontier to
4 negotiate with Airbus, did you?

5 A. No.

6 Q. These were complicated negotiations on an aircraft that
7 were ready to be delivered, were they not?

8 A. Yes.

9 Q. And in your experience there weren't very many lessors who
10 had the ability to defer aircraft that were already
11 manufactured; isn't that correct?

12 A. Well, in this case it wasn't necessarily a lessor's ability
13 to defer aircraft.

14 Q. The airlines ability to defer aircraft?

15 A. No, but given the extremity of the situation with the
16 pandemic, we thought that it could be possible.

17 Q. It would be difficult though, correct?

18 A. It would be difficult, yes.

19 Q. And you knew that going in with making your request for,
20 first, a three to six-month delivery deferral through
21 Ms. O'Callaghan on March 26, correct?

22 A. Yes, we did also believe that it was possible for them to
23 find other financiers to take deliveries instead of us.

24 Q. You didn't know of any airline other than perhaps one that
25 had been successful in deferring near-term deliveries with

O4GBFRO4

Sheridan - Cross

1 Airbus; isn't that right?

2 A. I believe that's correct.

3 Q. And that one likely had clause in its agreement with Airbus
4 that permitted that type of delay, correct?

5 A. I don't know if I've seen that in an email or in a news
6 article, maybe. I don't know if that's the case.

7 Q. Let's look at exhibit 58, please. Exhibit 58 comes after a
8 phone call that you had with Mr. Dempsey and Mr. Fanning and
9 Jane O'Callaghan the prior day. Isn't that true?

10 A. Yes, I think so.

11 Q. And in that phone call Mr. Dempsey gave you information
12 about how difficult it was going to be to convince Airbus to
13 move aircraft at this point in time; isn't that the case?

14 A. I don't recall the details of that phone call.

15 Q. Do you recall you had prior to this time a prepayment of
16 rent request that came through Ms. O'Callaghan as of March 26,
17 2020, in a proposal to Frontier?

18 A. I don't recall the details of that proposal.

19 Q. Let's look at exhibit 51, please. This is an email from
20 Ms. O'Callaghan to all, and it's got four points listed in it.
21 It's dated March 26, 2020. Do you see that, sir?

22 A. Yes, I do.

23 Q. The first point is the requirement of a 12-month rent
24 holdback to be prepaid on closing lease commencement, and it
25 would equate to approximately three million, correct?

O4GBFRO4

Sheridan - Cross

1 A. Yes.

2 Q. And then at that time Ms. O'Callaghan was seeking a three
3 to six-month delivery on the remaining four aircraft under the
4 Framework Agreement, correct, second bullet point?

5 A. Yes, that's correct.

6 Q. Let's go forward now to April 3. If you look at the very
7 first paragraph under the, We have discussed sentence relating
8 to discussions with a shareholder overnight?

9 A. Yes.

10 Q. You say unfortunately their position has not changed.
11 We've been authorized to grant you a three-month rent deferral
12 requested on 14 of the 15 aircraft leased by AMCK, excluding
13 the one delivered on March 16, with repayment over the
14 subsequent four months at 6 percent, but strictly on the basis
15 that we suspend the SLB for six months by when we hope the
16 market to return to more normal conditions.

17 Did I capture that accurately?

18 A. Yes, you did.

19 Q. And that was designed to have the rent deferral repaid
20 before any delivery; is that correct?

21 A. Yes, that is correct.

22 Q. And that was a consistent request from AMCK through the
23 course of April 2020, wasn't it?

24 A. Yes, it was.

25 Q. You go on to say in the second paragraph, basically you're

O4GBFRO4

Sheridan - Cross

1 capturing the call from the discussion the prior day that you
2 were hearing on a daily basis that many airlines and lessors
3 have agreed deferrals and in some cases cancellations. And
4 indeed Airbus has just alluded to cutting production in order
5 to avoid a glut of undelivered aircraft. You see that
6 reference?

7 A. Yes.

8 Q. You were just getting information from the market about
9 cancellation?

10 A. It would have been from new stories from contacts in the
11 market, yes.

12 Q. And again you didn't know the circumstances involved in
13 those cancellation of deliveries from Airbus, did you?

14 A. No.

15 Q. You did not know the state of production that the aircraft
16 were in, did you?

17 A. No.

18 Q. Let's turn to Joint 66, please. Pardon me, 65. We're
19 going to scroll down a little bit.

20 Mr. Sheridan, this is a communication to Jimmy Dempsey
21 related to a call that occurred with Robert Fanning on the 6th
22 of April 2020, correct?

23 A. Yes, that's correct.

24 Q. And that you testified about on direct examination which
25 was for the purpose of granting a ten-day grace period,

O4GBFRO4

Sheridan - Cross

1 correct?

2 A. That's correct.

3 Q. And the purpose of granting that grace period, that waiver,
4 was that you were mindful of the time it might take for
5 Frontier to reach agreement with Airbus or make some other
6 arrangements and therefore of the ability for AMCK to reach a
7 deferral agreement, correct?

8 A. That's correct.

9 Q. So there were two related concepts here. Frontier needed
10 time to negotiate with Airbus, correct?

11 A. Or to make other arrangements, correct, yes.

12 Q. And in order to make arrangements with Airbus to defer
13 deliveries or get lessors to swap into your place, time was
14 needed?

15 A. Yes.

16 Q. And only after that was accomplished would you be in a
17 position to discuss working on finalizing a rent deferral;
18 isn't that correct?

19 A. I'm sorry. Could you repeat that question?

20 Q. Yes. Once you knew whether or not either the aircraft had
21 been delivered through an arrangement with Airbus or lessors
22 were swapping into your positions for the balance of the five
23 aircraft would you have been able to formalize a written
24 agreement on rent deferrals, correct?

25 A. For the larger rent deferral that they were talking about

O4GBFRO4

Sheridan - Cross

1 that was originally requested, yes, we had linked it to the
2 delay of the sale leaseback for that six-month period.

3 Q. And you wanted Frontier to proceed ahead and start talking
4 to Airbus, correct?

5 A. That's correct.

6 Q. Were you aware that Frontier had already reached out to
7 Airbus by the end of March 2020?

8 A. I don't recall whether I was aware of that at the time.

9 Q. Were you aware that they also spoke to Airbus in early
10 April 2020 before you extended this grace period of ten days?

11 A. I don't recall.

12 Q. But this was the construct of this grace period, work with
13 Airbus or other lessors, and then we can see if we'll enter a
14 formal rent deferral; is that right?

15 A. Given that the conditions that we were placing on granting
16 the rent deferral were to delay sale leaseback by that
17 six-month period, and unless it was some other commitment that
18 Frontier could have made to suspend the Framework Agreement or
19 suspend the Framework Agreement without having these agreements
20 in place, then I think, yes, that was probably the only course
21 of action.

22 Q. Yeah, but to suspend the Framework Agreement would only
23 have been doable by getting delivery delays; is that right?

24 A. No. That's not correct. I think the Framework Agreement
25 could have been suspended. It would have put more risk on

O4GBFRO4

Sheridan - Cross

1 Frontier. The Framework Agreement could have been suspended
2 and other financiers could have been found or the Framework
3 Agreement could have been suspended and deferrals were agreed
4 with Airbus.

5 Q. The more risk on Frontier to suspend the Framework
6 Agreement would mean that Frontier would not take deliveries
7 when aircraft were ready, right?

8 A. Not necessarily. What I meant by more risk would have
9 meant being that if there were no financiers at the time, they
10 would have to pay their own cash to fund the deliveries.

11 Q. And you knew that Frontier finance 100 percent of its
12 aircraft through sale leasebacks, correct?

13 A. Correct.

14 Q. You also knew that Frontier was in a position where it was
15 seeking to preserve cash due to the Covid pandemic?

16 A. Correct.

17 Q. So funding the aircraft itself was not a very tenable idea
18 given Frontier's condition at that time, correct?

19 A. Again, it would have been quite a difficult thing, yes.

20 Q. Scrolling up, please.

21 Now, Mr. Sheridan indicates he appreciates the fact
22 that pardon me. Mr. Dempsey indicates to you that he
23 appreciates the fact that a ten-day grace period was provided,
24 and he's indicating it's going to continue to be a challenge
25 with Airbus, correct?

O4GBFRO4

Sheridan - Cross

1 A. That's correct.

2 Q. And he states, I hope you would reconsider your position on
3 financing. You see that?

4 A. I do, yes.

5 Q. And what he was asking you was to reconsider the deferral
6 that you had been requesting; isn't that right?

7 A. I think it is, yes.

8 Q. Because you'd ask for six months at that point?

9 A. Yes.

10 Q. And then he says, let's catch up tomorrow; is that correct?

11 A. That's correct.

12 Q. When you gave this ten-day grace period to Frontier, did
13 you tell him that you needed any sort of approval from the
14 shareholder in order to have the authority to do that?

15 A. I don't think I did, no.

16 Q. Did you ever tell Mr. Dempsey that you needed shareholder
17 approval to engage in a waiver of any kind?

18 A. I don't remember if I ever said that.

19 Q. As of this time on April 6, it had been communicated to you
20 that Airbus was closing for the month of April; isn't that
21 right?

22 A. After this time or around this time, yes.

23 Q. And as of April 6th, you also understood that delivery
24 deferrals would be difficult to obtain with Airbus, but not
25 impossible; isn't that right?

O4GBFRO4

Sheridan - Cross

1 A. That's correct.

2 Q. You had a conversation with Mr. Dempsey on April 7; isn't
3 that correct?

4 A. That's correct.

5 Q. And in it Mr. Dempsey propose a month-to-month, and you
6 didn't disagree with that, did you?

7 A. I would say I didn't agree or disagree with it, yeah.

8 Q. And if Mr. Dempsey contends that you agreed with it, you
9 would deny that; is that correct?

10 A. That's correct.

11 Q. And you claim that you said, well, I'll check or something
12 to that effect?

13 A. I don't recall what I said.

14 Q. You certainly didn't say you didn't have the authority to
15 grant that, did you?

16 A. I don't recall.

17 Q. If Mr. Dempsey has testified here that you never made any
18 statement along those lines, would you disagree with that?

19 A. That I never made any statement along the lines of it being
20 outside my authority or --

21 Q. Yes.

22 A. I guess, yeah, I would accept it, but I don't recall.

23 Q. Let's look at Joint Exhibit 71, please. Let's go to page
24 two, please.

25 First, I'd like to focus to your Catch Up email to the

O4GBFRO4

Sheridan - Cross

1 shareholders. And that's what you were telling them on April
2 7th what you discussed on April 6 with Robert Fanning and
3 confirmed with Mr. Dempsey on April 6; is that correct?

4 A. Yes, that's correct.

5 Q. And your goal is to give a bit of time to reach an amicable
6 agreement and reach a discussion -- and achieve a discussion
7 relating -- achieve results relating to delivery deferrals with
8 Airbus, correct?

9 A. Excuse me. Could you repeat that question.

10 Q. Yes. You said to catch you up there talking with Airbus
11 and with other financiers for the upcoming deliveries, correct?

12 A. Correct.

13 Q. You further state, To give us a bit of time to reach an
14 amicable agreement, we extended them a grace period of 10
15 working days on nonpayment of rent, correct?

16 A. Correct.

17 Q. I'm shifting forward now to April 7, and this conversation
18 that you had with Mr. Dempsey.

19 Isn't it true that he told you that it would take
20 longer than ten days to reach an agreement with Airbus?

21 A. I don't recall.

22 Q. If he testified to having so stated that to you, you have
23 no basis to suggest that that did not happen, correct?

24 A. Correct.

25 Q. Let's scroll up slightly right here where Mr. Ma is saying

O4GBFRO4

Sheridan - Cross

1 to you, Thanks, Paul, have you managed to find the answer to my
2 questions, like anyone in the world taking deliveries or anyone
3 taking deliveries from Frontier. We really cannot. That's
4 what he communicated to you, correct?

5 A. Yes.

6 Q. And that was a constant position of the shareholder that
7 they didn't want to take these deliveries; isn't that right?

8 A. I wouldn't quite characterize it as a constant, but it came
9 up from time to time, yes.

10 Q. Let's move up in this email chain to the top. You then
11 said, Not quite a full answer, but we haven't found anyone who
12 definitively will take deliveries unless they are really forced
13 into it. You see that reference?

14 A. I do, yes.

15 Q. So AMCK's learning of this was from marketplace
16 information?

17 A. In all probability, yes.

18 Q. And it was precisely the position that AMCK did not want to
19 be in, isn't that correct?

20 You didn't want to be forced into it?

21 A. I don't know if I quite characterize it that way. I think
22 what I'm expressing here is that the leasing world and the
23 airline world was trying not to take delivery of aircraft. It
24 was theme of the time because it was right in the middle of the
25 pandemic, the first shutdown.

O4GBFRO4

Sheridan - Cross

1 Q. The question to you is, have you found anyone, like anyone
2 in the world taking deliveries that was relating to the
3 lessors, was it not?

4 A. It may have been lessors and airlines. I can't remember.

5 Q. But you already knew that lessors could only defer
6 deliveries in very rare instances, isn't that so?

7 A. I think the answer is a little more complicated because if
8 it was a lessor with a sale leaseback as oppose to a lessor
9 with its own order position under a purchase agreement with
10 Airbus in the first case where the lessor is a sale leaseback
11 that's governed by the airlines agreement rather than the
12 lessor agreement, so it may be more complicated.

13 Q. Focusing on lessors who have sale leasebacks. You knew
14 that the taking of deliveries from the manufacturer was
15 governed by the airline and the manufacturer agreement,
16 correct?

17 A. Yes, that's correct.

18 Q. And you knew that the only way not to take a delivery is if
19 the airline had a specific clause in its primary agreement with
20 the manufacturer that allowed it; isn't that true?

21 A. Well, absent an additional agreement with Airbus to allow
22 it, yes.

23 Q. And you did not want to be in the position of being forced,
24 AMCK did not want to be in the position of being forced to take
25 a delivery; isn't that right?

O4GBFRO4

Sheridan - Cross

1 A. That's not necessarily the case. I think what I meant by
2 that wording was more that leasing companies were reluctantly
3 taking aircraft because they were tending to go straight into
4 storage. And often with airlines that didn't have the
5 financial strength to pay the rents, but they decided they
6 didn't have any choice.

7 Q. Knew you that Frontier intended to fly these A320neos,
8 correct?

9 A. I don't remember exactly. At the time we didn't know what
10 was going to be allowed for the course of that year, so there
11 may have been an intention to fly them, but we couldn't predict
12 even one month beyond whether they'd still be allowed to or
13 not.

14 Q. Didn't Mr. Fanning report to you and Jane O'Callaghan that
15 these aircraft would fly?

16 A. I think he did. I don't recall exactly.

17 Q. And did Mr. Dempsey report to you that the aircraft would
18 fly?

19 A. I think so. I don't recall precisely.

20 Q. Let's turn to exhibit 76, please. This is April 8 email
21 from you to Gerald Ma. You were asked about it on direct
22 examination.

23 You indicate you were giving a quick update situation
24 with Frontier. They will formally ask Airbus for a deferral
25 this week; is that right?

O4GBFRO4

Sheridan - Cross

1 A. That's what it says, yes.

2 Q. It says you spoke to the CFO, that would be Mr. Dempsey?

3 A. Yes.

4 Q. And that was yesterday April 7, correct?

5 A. Yes, correct.

6 Q. And you indicate that you wanted to reiterate your aim at
7 this stage was try to find a way to work with them to get the
8 deliveries deferred. And that since between AMCK, Frontier and
9 Airbus, one of the three of us has to take the hit. And your
10 aim was to make sure it would be Airbus; is that right?

11 A. That's correct.

12 Q. Now, you testified on direct that you said to him that you
13 wouldn't tell him at this stage what we would do if that didn't
14 happen because you say, I think it would require board approval
15 to walk away. You see that statement to your shareholder?

16 A. I do, yes.

17 Q. Isn't it true, sir, that you did not say anything about
18 board approval in that conversation with Mr. Dempsey?

19 A. I don't recall.

20 Q. Let's take a look at your deposition, page 113, please.

21 We're going to look at line 18. Pardon me. I'll frame it up
22 with line 12.

23 I'm referring to this very exhibit. It goes onto say,
24 I said that I wouldn't tell him at this stage that what we
25 would do if that didn't happen because I think that it would

O4GBFRO4

Sheridan - Cross

1 require a board approval for us to walk away.

2 Question: So my question is this: Did you simply say
3 to Mr. Dempsey -- he's the CFO, correct?

4 Answer: Correct.

5 Did you simply say to Mr. Dempsey, I won't say what we
6 would do if a deferral does not happen?

7 And the answer was, I don't recall the specifics of
8 the conversation, but what I reported here is, he looks like he
9 would have ask me what would happen in the circumstance. And I
10 said, I don't know. I can't tell you what we'd be doing. Is
11 that your answer to those questions?

12 A. It was, yes.

13 Q. And you did not mention the approval of the board in
14 responding to Mr. Dempsey, did you?

15 A. No, but I don't think it would have been necessary.

16 Q. Back to exhibit 76. You go on to describe in the second
17 paragraph that Frontier was not arguing against you, but were
18 understandably worried about being in a default position with
19 Airbus, correct?

20 A. Correct.

21 Q. And then you go onto say in the third sentence, In the
22 meantime he is asked us for us to do the deferral on a
23 month-by-month basis there, also conscious that they don't want
24 to be in default with us. That was expressed to you by
25 Mr. Dempsey, correct?

O4GBFRO4

Sheridan - Cross

1 A. That's correct.

2 Q. And then you go on, since the next delivery isn't going to
3 be in April now that the Mobile plant is shut, I think we can
4 agree to this and give them a bit more time to work with
5 Airbus; correct?

6 A. That's correct.

7 Q. So you understood that it would take time to work with
8 Airbus as of April 8, immediately following the conversation
9 with Jimmy Dempsey on April 7, correct?

10 A. That's correct.

11 Q. You never went back to Mr. Dempsey and told him that there
12 was no month-to-month rent deferral, correct?

13 A. Well, we went back to Robert Fanning with a draft agreement
14 to document and execute a deferral for the end of April.

15 Q. You did not go back to Mr. Dempsey and tell him that there
16 would be no month-to-month rent deferral, did you?

17 A. I'm not sure that there was any -- there was never any
18 agreement on what month-to-month even meant. Month-to-month
19 for us was for the month of April, which, once we had got the
20 shareholders to agree with the approach, we put to Robert
21 Fanning in form of deferral agreement that they didn't respond
22 to.

23 Q. My question is simple. Did you ever go back to Mr. Dempsey
24 after reporting to your shareholder that Mr. Dempsey had asked
25 for a month to month, did you ever go back to Mr. Dempsey and

O4GBFRO4

Sheridan - Cross

1 say, We're not going to give you a month to month?

2 A. I didn't say it in those terms, no.

3 Q. Let's turn to 77, please. I believe this exhibit was
4 also -- we'll scroll down and see if we can get into I believe
5 April 8. This was discussed with you on direct examination.

6 This is where you're giving the update to the
7 shareholder of the call that you had, and we've been through
8 most of this in my prior questioning. Let's look above it.
9 And Gerald Ma was in agreement with this; is that correct?

10 A. That's correct.

11 Q. And then he sought the input from Francis Lee and Lilian
12 Kiang. And they were also in agreement, were they not?

13 A. They were in agreement with a deferral to the end of April,
14 yes.

15 Q. Did you ever go back to Mr. Dempsey and say the deferral
16 period would only be to the end of April?

17 A. Well, we assume that by sending the draft deferral
18 agreement to Robert Fanning as well as Spencer and Sharath that
19 that was our way of communicating how the deferral was going to
20 work.

21 Q. Wasn't it the case that as of April 6, April 7, April 8 and
22 April 9, the consistent message from AMCK was you, Frontier,
23 need to be current before the next delivery?

24 A. The consistent message in those periods? Would you mind
25 repeating those questions.

O4GBFRO4

Sheridan - Cross

1 Q. The consistent message as of this point in time from AMCK
2 to Frontier was that they had to be current before the next
3 delivery on any outstanding rent?

4 A. Yes, that's correct.

5 Q. Let's look at Joint Exhibit 78.

6 MR. HOSENPUD: Your Honor, I think I can get through
7 this exhibit and then perhaps we recess for the afternoon.
8 Thank you.

9 Q. So we're looking at Joint Exhibit 78.

10 Now, this is an email from you. The subject is email
11 for Bill Franke, and you're writing to Gerald Ma; is that
12 right?

13 A. That's correct.

14 Q. And you are saying to him, This is an email below that I
15 drafted for you to send to Bill Franke to hopefully advance the
16 discussions on the deferrals to the next stage, correct?

17 A. Correct.

18 Q. Now, in the body of what you drafted, I'm going to focus
19 you on the second paragraph where you say, you ghost drafted,
20 The aircraft leasing team has been discussing this with the two
21 airlines with the aim of deferring these deliveries as well as
22 offering support through rent deferrals for near-term. We are
23 sure that neither airline wants the deliveries, and we don't
24 want to fund them, but that Airbus do want to complete them.
25 You see that sentence?

O4GBFRO4

Sheridan - Cross

1 A. I do, yes.

2 Q. And did you ever confirm with Frontier that it did not want
3 deliveries?

4 A. Not to my recollection, no.

5 Q. And you say, And we don't want to fund them. That was
6 AMCK's position, correct?

7 A. In the context of the pandemic shutdowns, we thought that a
8 deferral of those deliveries was the best outcome for us, and
9 that maybe a slightly short time to say that, yes.

10 Q. But then you note that Airbus do want to complete them,
11 that's because you recognize these were short. These were
12 deliveries in the immediate short-term period, correct?

13 A. Not necessarily correct, no. I would say Airbus, it was in
14 Airbus interest to deliver aircraft to people and get cash in
15 themselves. So whether they were nearly complete or not,
16 Airbus would have still wanted to complete them.

17 Q. But your focus was on the near-term, as well as those that
18 were going to be in the second half of 2020, correct?

19 A. Yes, correct.

20 MR. HOSENPUD: All right. I think, your Honor, this
21 may be a good stopping point if the Court approves.

22 THE COURT: Very good. See you tomorrow morning.

23 MR. HOSENPUD: Thank you.

24 MR. BUTLER: Thank you, your Honor.

25 (Adjourned to April 17, 2024, at 11:00 a.m.)

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